

Exhibit 2

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 SAN FRANCISCO DIVISION
 4
 5

6 IN RE: CATHODE RAY TUBE (CRT))
 7 ANTITRUST LITIGATION) Case No.
 8 _____) 07-5944 SC
 9)
 10 This Document Relates to:) MDL No. 1917
 11)
 12 ALL ACTIONS)
 13)
 14 _____)

15 CONFIDENTIAL TRANSCRIPT

16 VIDEOTAPED ROBERT THOMPSON, AS CORPORATE
 17 DEPOSITION OF: REPRESENTATIVE OF MARTA
 18 COOPERATIVE OF AMERICA, INC.
 19 TAKEN ON BEHALF OF: THE TOSHIBA DEFENDANTS
 20 DATE TAKEN: FRIDAY, FEBRUARY 14, 2014
 21 TIME: 9:00 A.M. - 5:16 P.M.
 22 PLACE: THE WESTIN TAMPA BAY
 7627 COURTNEY CAMPBELL CAUSEWAY
 23 EXECUTIVE BOARD ROOM
 24 TAMPA, FLORIDA 33607
 25
 TAKEN BEFORE: NINETTE BUTLER, RPR, CRR,
 FPR AND NOTARY PUBLIC

2	<p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR MARTA COOPERATIVE OF AMERICA, INC., AND ROBERT THOMPSON:</p> <p>BOIES, SCHILLER & FLEXNER, LLP 30 South Pearl Street, 11th Floor Albany, New York 12207 BY: ADAM R. SHAW, ESQUIRE (518) 434-0600 ashaw@bsflp.com</p> <p>FOR THE DEFENDANTS TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC.; AND TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.:</p> <p>WHITE & CASE, LLP 701 Thirteenth Street, NW Washington, D.C. 20005 BY: LUCIUS B. (ALBIE) LAU AND TSUNG-HUI (DANNY) WU (202) 626-3696 alau@whitecase.com twu@whitecase.com</p> <p>FOR THE DEFENDANTS KONINKLIJKE PHILIPS ELECTRONICS N.V., PHILIPS ELECTRONICS NORTH AMERICA CORPORATION: (Telephonic Appearance) BAKER BOTTS, LLP The Warner 1299 Pennsylvania Avenue, NW Washington, D.C. 20004 BY: TIFFANY B. GELOTT, ESQUIRE (202) 639-7766 tiffany.gelott@bakerbotts.com</p>	4
3	<p style="text-align: center;">A P P E A R A N C E</p> <p>FOR THE DEFENDANTS PANASONIC CORPORATION, PANASONIC CORPORATION OF AMERICA, AND MATSUSHITA TOSHIBA PICTURE DISPLAY CO., LTD. (œMTPD): (Telephonic Appearance) WEIL, GOTSHAL & MANGES, LLP 767 Fifth Avenue New York, New York 10153 BY: LARA E. VEBLEN TRAGAR, ESQUIRE (212) 310-8000 lara.tragar@weil.com</p> <p>FOR THE DEFENDANTS HITACHI, LTD.; HITACHI AMERICA, LTD.; HITACHI ASIA, LTD.; HITACHI DISPLAYS, LTD.; AND HITACHI ELECTRONIC DEVICES USA: (Telephonic Appearance) KIRKLAND & ELLIS, LLP 555 California Street, Suite 2700 San Francisco, CA 94104 BY: ANDREW WIENER, ESQUIRE (415) 439-1608 andrew.wiener@kirkland.com</p> <p>FOR THE INDIRECT PURCHASER PLAINTIFFS: (Telephonic Appearance) SHARP MCQUEEN LAW OFFICE 419 North Kansas Avenue Liberal, Kansas 67901 BY: IKE DIEL, ESQUIRE (620) 624-2548 idiel@sharpmcqueen.com</p> <p>ALSO PRESENT: LEE MCKEE, VIDEOGRAPHER</p>	5
1	<p style="text-align: center;">C O N T E N T S</p> <p style="text-align: right;">PAGE</p> <p>TESTIMONY OF ROBERT THOMPSON</p> <p>Direct Examination by Mr. Lau 8</p> <p>CERTIFICATE OF REPORTER 226</p> <p>CERTIFICATE OF OATH 227</p> <p style="text-align: center;">---o0o---</p>	1
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1	<p style="text-align: center;">E X H I B I T S</p> <p>EXHIBIT 2481.....12 Notice of Deposition of Plaintiff MARTA Cooperative of America, Inc., Pursuant to Rule 30(b)(6)</p> <p>EXHIBIT 2482.....50 MARTA Committee Lists</p> <p>EXHIBIT 2483.....98 E-mail Correspondence, First E-mail to Aimee Fields from Paula Cook, Dated July 16, 2004</p> <p>EXHIBIT 2484 (Number not used)</p> <p>EXHIBIT 2485.....111 Audited Financial Statement, July 31, 2001 and 2000</p> <p>EXHIBIT 2486.....119 Financial Analysis Report</p> <p>EXHIBIT 2487.....122 Invoice from Toshiba America Consumer Products, Inc., to MARTA/Jetson's TV & Appliance Center</p> <p>EXHIBIT 2488.....139 Marketing Funds Classifications</p> <p>EXHIBIT 2489.....144 Co-Marketing Program</p> <p>EXHIBIT 2490.....147 Thomson spreadsheet</p> <p>EXHIBIT 2491.....163 Central Billing Transition</p> <p>EXHIBIT 2492.....172 Philips T1 Pricing</p> <p>EXHIBIT 2493.....179 MARTA Show Specials</p> <p>EXHIBIT 2494.....181 Manufacturer Credits</p> <p>EXHIBIT 2495.....188 Excel Spreadsheet</p>	1
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<p style="text-align: right;">6</p> <p>1 EXHIBITS</p> <p>2</p> <p>3 EXHIBIT 2496.....203</p> <p>4 E-mail Correspondence, First E-mail from Bill Bursley</p> <p>5 to Warren Mann, Dated November 3, 2005</p> <p>6 EXHIBIT 2497.....207</p> <p>7 Video Board</p> <p>8</p> <p>9 EXHIBIT 2498.....209</p> <p>10 E-mail Correspondence, First E-mail from MARTA</p> <p>11 Cooperative to marta@martacoop.com</p> <p>12</p> <p>13 ---o0o---</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 MARTA Cooperative of America, Inc.</p> <p>2 MR. LAU: Could we ask the attorneys on the</p> <p>3 phone to enter an appearance, please?</p> <p>4 MS. GELOTT: This is Tiffany Gelott. Go</p> <p>09:02 5 ahead.</p> <p>6 MR. WIENER: Andrew Wiener with Kirkland &</p> <p>7 Ellis, representing the Hitachi defendants.</p> <p>8 MS. TRAGAR: Lara Tragar, Weil, Gotshal &</p> <p>9 Manges, representing the Panasonic defendants.</p> <p>09:02 10 MR. DIEL: Ike Diel, representing the Indirect</p> <p>11 Purchaser plaintiffs.</p> <p>12 MS. GELOTT: Tiffany Gelott with Baker Botts</p> <p>13 representing the Philips defendants.</p> <p>14 MR. LAU: Is that everybody?</p> <p>09:03 15 THE VIDEOGRAPHER: Will the court reporter</p> <p>16 please swear in the witness?</p> <p>17 ROBERT THOMPSON,</p> <p>18 having been first duly sworn to tell the truth, was</p> <p>19 examined and testified as follows:</p> <p>09:03 20 THE WITNESS: I do.</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MR. LAU:</p> <p>23 Q. Good morning, Mr. Thompson. How are you?</p> <p>24 A. Fine.</p> <p>09:03 25 Q. Mr. Thompson, have you ever been deposed</p>
<p style="text-align: right;">7</p> <p>1 PROCEEDINGS</p> <p>2 ROBERT THOMPSON,</p> <p>3 having been first duly sworn to tell the truth, was</p> <p>4 examined and testified as follows:</p> <p>5 THE WITNESS: I do.</p> <p>6 THE VIDEOGRAPHER: We are now on the record in</p> <p>7 the matter of In Re: Cathode Ray Tube Antitrust</p> <p>8 Litigation, CRT. Today's date is February 14th,</p> <p>9 2014. The time is nine o'clock.</p> <p>09:01 10 This is the videotaped deposition of Bob</p> <p>11 Thompson, being taken at 7627 Courtney Campbell</p> <p>12 Causeway, Tampa, Florida.</p> <p>13 My name is Lee McKee. I am the camera</p> <p>14 operator, representing Barkley Court Reporters,</p> <p>09:01 15 located at 1875 Century Park East, Suite 1300, Los</p> <p>16 Angeles, California. The court reporter is Ninette</p> <p>17 Long with Barkley.</p> <p>18 Will counsel please introduce themselves?</p> <p>19 MR. LAU: My name is Albie Lau. I'm an</p> <p>09:01 20 attorney with White & Case in Washington, D.C., and</p> <p>21 I represent the Toshiba defendants.</p> <p>22 MR. WU: My name is Danny Wu, also with White</p> <p>23 & Case.</p> <p>24 MR. SHAW: Hi. This is Adam Shaw, Boies,</p> <p>09:02 25 Schiller & Flexner, representing the witness and</p>	<p style="text-align: right;">9</p> <p>1 before?</p> <p>2 A. Yes.</p> <p>3 Q. How many times?</p> <p>4 A. A number of times. Probably half a dozen or</p> <p>09:03 5 thereabouts.</p> <p>6 Q. Can you describe each and every time you've</p> <p>7 been deposed?</p> <p>8 A. I was deposed on the LCD case, most recently.</p> <p>9 Q. And when was that?</p> <p>09:03 10 A. Approximately two years ago. And then I have</p> <p>11 been deposed several times in my past career, working in</p> <p>12 Maytag, that spanned over 30 years. I don't recall the</p> <p>13 dates. Probably, over a period of time, three or four</p> <p>14 times within 20 years.</p> <p>09:04 15 Q. And what type of cases were these involving</p> <p>16 Maytag?</p> <p>17 A. One was a personnel case on age</p> <p>18 discrimination. Another one was -- it was one of our</p> <p>19 dealers. And I can't remember the specifics of what</p> <p>09:04 20 they were contending at this point in time.</p> <p>21 Q. So you were deposed in the LCD case about two</p> <p>22 years ago. And during your time with Maytag, it was</p> <p>23 perhaps three or four times over a 30-year period. Does</p> <p>24 that sound about right?</p> <p>09:04 25 A. Yeah. Yes, it does.</p>

<p style="text-align: right;">10</p> <p>1 Q. Now, other than that, have you ever been 2 deposed? 3 A. No. 4 Q. Okay. I'll go over briefly some ground rules, 09:05 5 which I'm sure you're familiar with. Today I'm going to 6 ask you a series of questions, and I need all of your 7 answers to be audible so that the court reporter can 8 hear it and write that down. Do you understand that? 9 A. I understand. 09:05 10 Q. Okay. Let's today not -- you and I not talk 11 over each other. I'll ask my questions. You may want 12 to give your counsel a chance to object. But if you and 13 I talk over each other, then it's very difficult for the 14 court reporter to record what's being said. Does that 09:05 15 make sense? 16 A. Yes. 17 Q. Okay. If at any time you need a break, please 18 let me know. I would just ask that if there is a 19 pending question that I have, to please give me the 09:05 20 complete answer first and then take a break. Does that 21 sound okay? 22 A. Yes. 23 Q. At various points today, your attorney, 24 Mr. Shaw, or perhaps other attorneys, may make 09:05 25 objections on the record. And this is fine. Unless</p>	<p style="text-align: right;">12</p> <p>1 me, Mr. Thompson? 2 A. No. 3 Q. Okay. Very good. 4 (Exhibit 2481 was marked for Identification.) 09:07 5 BY MR. LAU. 6 Q. At this point, let's start with our first 7 exhibit. I would like the court reporter to mark this 8 as Exhibit 2481. And this is the January 8, 2014, 9 Notice of Deposition of Plaintiff MARTA Cooperative of 09:07 10 America, Inc., Pursuant to Rule 30(b)(6). 11 Take a few minutes and familiarize yourself 12 with the document, and let me know when you're ready to 13 go. 14 A. I'm ready. 09:08 15 Q. Mr. Thompson, do you recognize this document? 16 A. Yes. 17 Q. And what is it? 18 A. It was the document that was sent to me 19 concerning the deposition today. 09:08 20 Q. Okay. And did you review this document when 21 you received it? 22 A. Yes. 23 Q. Okay. Turn to Exhibit A of that document. 24 And then on Page 2, there is a section called "Schedule 09:09 25 of Deposition Topics," and that goes on for a few pages.</p>
<p style="text-align: right;">11</p> <p>1 your attorney, however, specifically instructs you not 2 to answer a question -- for example, if the question 3 asks you to disclose attorney/client privileged 4 information -- putting that aside, you do need to answer 09:06 5 all of my questions completely. Do you understand? 6 A. Yes. 7 Q. Mr. Thompson, I want you to understand my 8 questions today. I don't want you to answer anything 9 that's confusing or that you don't understand. So if I 09:06 10 ask a question and if you don't understand what I'm 11 asking, I want you to specifically say, Mr. Lau, I don't 12 understand that, and then I'll come up with a better 13 question that you do understand. Agreed? 14 A. Agreed. 09:06 15 Q. So if you do answer my questions, is it fair 16 to assume that you understand what's being asked? 17 A. Yes. 18 Q. Thank you. 19 Mr. Thompson, is there anything -- any reason 09:06 20 that would prevent you from giving complete and accurate 21 testimony today in terms of sickness, emotional 22 distress, any reason why you might not be able to give 23 full, complete and truthful testimony today? 24 A. No. 09:07 25 Q. Before we begin, do you have any questions for</p>	<p style="text-align: right;">13</p> <p>1 There are a total of 32 categories altogether. Is that 2 right? 3 A. Yes. 4 Q. Are you prepared today to testify on behalf of 09:09 5 MARTA with respect to each and every one of these 32 6 separate topics? 7 A. Yes. 8 Q. Okay. Very good. 9 What did you do to prepare for today's 09:09 10 testimony? 11 A. Review this document, ask questions of 12 individuals that might be able to help me prepare for 13 this document -- for this deposition and reviewed my 14 notes from my last deposition, as there were some 09:09 15 similarity in the questions. 16 Q. You said that you reviewed this document. Did 17 you review any other documents other than this Notice of 18 Deposition? 19 A. Any other documents, you mean -- 09:10 20 Q. Business records -- 21 A. Oh, yes. Yeah. 22 Q. Were all these -- well, how many documents 23 altogether did you review? 24 A. I don't know. I mean, whatever I thought 09:10 25 would apply. And then I pulled out things that might be</p>

<p style="text-align: right;">14</p> <p>1 useful for this deposition.</p> <p>2 Q. Can you give me a good-faith estimate as to</p> <p>3 the number of documents you reviewed?</p> <p>4 A. A dozen.</p> <p>09:10 5 Q. A dozen. Okay.</p> <p>6 Now, of these dozen documents that you</p> <p>7 reviewed, were they all documents that have been</p> <p>8 produced in this case?</p> <p>9 A. Yes.</p> <p>09:11 10 Q. And how do you know? How do you know that?</p> <p>11 A. From our case -- the case information that was</p> <p>12 provided.</p> <p>13 Q. Did all these documents have a Bates number on</p> <p>14 the lower right-hand corner?</p> <p>09:11 15 A. I don't know. I mean --</p> <p>16 Q. How do you know that there were documents that</p> <p>17 have been produced in this case?</p> <p>18 A. We turned over our records to -- and requested</p> <p>19 to our legal counsel, and they turned over the</p> <p>09:11 20 information for you folks to review. And I guess I'm</p> <p>21 assuming it's all in here --</p> <p>22 Q. Okay.</p> <p>23 A. -- because of the date that's requested.</p> <p>24 Q. The documents that you reviewed, were they</p> <p>09:11 25 documents that your attorney selected for you, or did</p>	<p style="text-align: right;">16</p> <p>1 ones you remember are an example of purchase data, an</p> <p>2 example of the sales data, the bylaws, the Articles of</p> <p>3 Incorporation. Any other document that comes to mind</p> <p>4 that you reviewed?</p> <p>09:13 5 A. I can't think of anything specific right now.</p> <p>6 Q. You mentioned that in preparing for the</p> <p>7 deposition, you asked questions of certain individuals,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>09:14 10 Q. Who did you speak to?</p> <p>11 A. Aimee Fields.</p> <p>12 Q. And who's Aimee Fields?</p> <p>13 A. May I pause for a second? I'll give you the</p> <p>14 spelling of Aimee so you have it: A-I-M-E-E.</p> <p>09:14 15 Aimee Fields is the office manager.</p> <p>16 Q. Is she currently the office manager for MARTA?</p> <p>17 A. Yes.</p> <p>18 Q. Who else did you speak with?</p> <p>19 A. Tom Balistreri.</p> <p>09:14 20 Q. Could you spell his last name for me?</p> <p>21 A. B-A-L-E-S-T-R-E-I [sic].</p> <p>22 Q. And who is Mr. Balistreri?</p> <p>23 A. He's the chairman of the -- current chairman</p> <p>24 of the board of directors at MARTA. And he's also the</p> <p>09:14 25 president of Colder's, who is a member of MARTA.</p>
<p style="text-align: right;">15</p> <p>1 you select them yourself, in terms of saying, hey, this</p> <p>2 is a document that I think I need to review for this</p> <p>3 deposition?</p> <p>4 A. It was a document that I felt I needed to</p> <p>09:12 5 review.</p> <p>6 Q. Okay. Please describe to me each and every</p> <p>7 one of the documents that you reviewed.</p> <p>8 A. An example of our purchase data, an example of</p> <p>9 our sales data, our bylaws.</p> <p>09:12 10 There was something else. It's not called</p> <p>11 bylaws but Articles of Incorporation. That's what I can</p> <p>12 remember at this point.</p> <p>13 Q. Okay. And did these dozen documents, did they</p> <p>14 refresh your recollection as to events that occurred</p> <p>09:13 15 about MARTA's involvement in the CRT industry?</p> <p>16 MR. SHAW: Object to the form. I just want to</p> <p>17 know if it was a 30(b)(6) deposition.</p> <p>18 BY MR. LAU:</p> <p>19 Q. Go ahead.</p> <p>09:13 20 A. I guess I don't quite understand.</p> <p>21 Q. Did you look at the documents, say, for</p> <p>22 example, when you looked at the bylaws, did you say, ah,</p> <p>23 this helps me remember better what MARTA was doing?</p> <p>24 A. Yes.</p> <p>09:13 25 Q. So you reviewed a dozen or so documents. The</p>	<p style="text-align: right;">17</p> <p>1 Q. How do you spell Colder?</p> <p>2 A. C-O-L-D-E-R-S.</p> <p>3 Q. Okay. Who else did you speak with?</p> <p>4 A. John Rice.</p> <p>09:15 5 Q. And who's Mr. Rice?</p> <p>6 A. John is currently the treasurer of MARTA's</p> <p>7 board of directors. He is also president of Rice's</p> <p>8 Appliance & TV.</p> <p>9 Q. Who else did you speak with?</p> <p>09:15 10 A. Attorneys.</p> <p>11 Q. Which attorneys did you speak with?</p> <p>12 A. Bob Tietjen.</p> <p>13 Q. Who else?</p> <p>14 A. Adam Shaw.</p> <p>09:15 15 Q. Anyone else?</p> <p>16 A. No.</p> <p>17 Q. Did you meet with Mr. Tietjen or did you speak</p> <p>18 with him on the phone?</p> <p>19 A. I spoke with him on the phone.</p> <p>09:15 20 Q. How many times?</p> <p>21 A. Two.</p> <p>22 Q. For how long?</p> <p>23 A. Approximately an hour each phone call.</p> <p>24 Q. And did you meet with or speak with Mr. Shaw</p> <p>09:16 25 on the telephone to prepare?</p>

<p style="text-align: right;">18</p> <p>1 A. Yes.</p> <p>2 Q. Which one? Did you speak with him on the</p> <p>3 phone?</p> <p>4 A. Yes.</p> <p>09:16 5 Q. How many times?</p> <p>6 A. Two.</p> <p>7 Q. How long were these conversations?</p> <p>8 A. A total of two hours, an hour each time.</p> <p>9 Q. And did you meet with Mr. Shaw?</p> <p>09:16 10 A. Yes.</p> <p>11 Q. How many times?</p> <p>12 A. One.</p> <p>13 Q. For how long?</p> <p>14 A. Two hours.</p> <p>09:16 15 Q. And when did this meeting occur?</p> <p>16 A. Yesterday.</p> <p>17 Q. So other than speaking with Aimee Fields and</p> <p>18 Tom Balistreri and Mr. Rice and your attorneys, did you</p> <p>19 meet with or speak with any individuals to prepare for</p> <p>09:17 20 today's deposition?</p> <p>21 A. No.</p> <p>22 Q. And other than reviewing the dozen or so</p> <p>23 documents, do you recall any other steps you took to</p> <p>24 prepare for today's deposition?</p> <p>09:17 25 A. No.</p>	<p style="text-align: right;">20</p> <p>1 Q. Who is Mr. Mann?</p> <p>2 A. Warren was the executive director of MARTA</p> <p>3 from 2000 -- I'm sorry -- 1999 to 2005.</p> <p>4 Q. Who is Mr. Mann's current employer?</p> <p>09:19 5 A. I don't know.</p> <p>6 Q. Where is Mr. Mann currently located?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you recognize the name Bill Bursley,</p> <p>9 B-U-R-S-L-E-Y?</p> <p>09:19 10 A. Yes.</p> <p>11 Q. Who is Mr. Bursley?</p> <p>12 A. Bill was the general manager of MARTA from</p> <p>13 2001 to 2006.</p> <p>14 Q. Do you know who his current employer is?</p> <p>09:20 15 A. I know who he was employed by. I don't know</p> <p>16 if he's still employed by the same employer.</p> <p>17 Q. Who was he employed by?</p> <p>18 A. Nationwide Buying Group.</p> <p>19 Q. And do you know where Mr. Bursley resides?</p> <p>09:20 20 A. No.</p> <p>21 Q. Do you recognize the name Jeff Sokol?</p> <p>22 A. Yes.</p> <p>23 Q. Who is Mr. Sokol?</p> <p>24 A. Jeff served as MARTA finance manager from 2003</p> <p>09:20 25 until 2010.</p>
<p style="text-align: right;">19</p> <p>1 Q. Other than -- other than yourself, who else</p> <p>2 might have information that's responsive to the 32</p> <p>3 deposition topics outlined in the Notice of Deposition?</p> <p>4 MR. SHAW: Object to the form. My concern is</p> <p>09:17 5 when you say "responsive," these are topics, not</p> <p>6 production issues.</p> <p>7 MR. LAU: Topics. That's right. Topics.</p> <p>8 BY MR. LAU:</p> <p>9 Q. In terms of the 32 different topics, who else</p> <p>09:18 10 has information that -- concerning these 32 different</p> <p>11 topics?</p> <p>12 A. Aimee Fields.</p> <p>13 Q. Anyone else?</p> <p>14 A. No.</p> <p>09:18 15 Q. How many people, Mr. Thompson, are currently</p> <p>16 employed by MARTA?</p> <p>17 A. Two.</p> <p>18 Q. Two. Yourself and Ms. Fields, correct?</p> <p>19 A. Correct.</p> <p>09:18 20 Q. I'm going to ask -- I'm going to give you a</p> <p>21 list of individuals, and I'm going to ask you whether</p> <p>22 you know these individuals and whether you know the</p> <p>23 location of these individuals.</p> <p>24 So do you recognize the name Warren Mann?</p> <p>09:19 25 A. Yes.</p>	<p style="text-align: right;">21</p> <p>1 Q. And who is Mr. Sokol's current employer?</p> <p>2 A. I don't know.</p> <p>3 Q. And where does Mr. Sokol currently reside?</p> <p>4 A. In the Phoenix area.</p> <p>09:21 5 Q. Do you recognize the name Dave Workman?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Mr. Workman?</p> <p>8 A. Dave is currently the leader of the PRO Group.</p> <p>9 His title might be executive director. It might be</p> <p>09:21 10 managing director. He's the leader of that group.</p> <p>11 Q. Did Mr. Workman ever work for MARTA?</p> <p>12 A. Yes.</p> <p>13 Q. In what capacity?</p> <p>14 A. He was the executive director.</p> <p>09:21 15 Q. From what time period?</p> <p>16 A. It was about a 60-day period immediately</p> <p>17 following Warren Mann's exit. I think it was the end of</p> <p>18 2005 and beginning of 2006.</p> <p>19 Q. And where does Mr. Workman currently reside?</p> <p>09:22 20 A. In the Dallas/Fort Worth area.</p> <p>21 Q. Do you recognize the name Gerald Dreyer?</p> <p>22 A. Yes.</p> <p>23 Q. And who is Mr. Dreyer?</p> <p>24 A. He was the executive director prior to Warren</p> <p>09:22 25 Mann.</p>

<p style="text-align: right;">22</p> <p>1 Q. During what time period?</p> <p>2 A. 1996 to 1999.</p> <p>3 Q. Okay. And who is Mr. Dreyer's current</p> <p>4 employer?</p> <p>09:22 5 A. I don't know.</p> <p>6 Q. And where does Mr. Dreyer currently reside?</p> <p>7 A. I don't know.</p> <p>8 Q. Have you ever met Mr. Dreyer before?</p> <p>9 A. No.</p> <p>09:22 10 Q. Do you recognize the name Joe Verdi?</p> <p>11 A. Yes.</p> <p>12 Q. Who is Mr. Verdi?</p> <p>13 A. He was the executive director of MARTA from</p> <p>14 1966 to 1995.</p> <p>09:23 15 Q. And who is Mr. Verdi's current employer?</p> <p>16 A. He's deceased.</p> <p>17 Q. Do you recognize the name Daniel Buich, B-U-I-C-I-C-H?</p> <p>18 B-U-I-C-I-C-H?</p> <p>19 A. Yes.</p> <p>09:23 20 I think it's Buich, but I might be wrong</p> <p>21 with that, too. I'm sorry.</p> <p>22 Q. Oh, I'm sure I have it wrong.</p> <p>23 And who is Mr. Buich?</p> <p>24 A. He was a merchandise manager at MARTA. I</p> <p>09:23 25 think it was back in '90 -- mid '90s.</p>	<p style="text-align: right;">24</p> <p>1 currently?</p> <p>2 A. I don't know, but I don't have any reason to</p> <p>3 believe that he doesn't reside in Cleveland.</p> <p>4 Q. Thank you.</p> <p>09:25 5 Do you recognize the name Wendy Pitts?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Ms. Pitts?</p> <p>8 A. She was the comptroller at MARTA in the '90s.</p> <p>9 Q. Do you know who Ms. Pitts' current employer</p> <p>09:25 10 is?</p> <p>11 A. No.</p> <p>12 Q. Do you know where Ms. Pitts currently resides?</p> <p>13 A. No.</p> <p>14 Q. Do you recognize the name John Ross?</p> <p>09:25 15 A. Yes.</p> <p>16 Q. Who is Mr. Ross?</p> <p>17 A. He was the finance manager at MARTA.</p> <p>18 Q. During what time period?</p> <p>19 A. Prior to Jeff Sokol. I think it might have</p> <p>09:26 20 been the end of -- 1999 up to 2002.</p> <p>21 Q. Do you know who Mr. Ross' current employer is?</p> <p>22 A. No.</p> <p>23 Q. Do you know where Mr. Ross currently resides?</p> <p>24 A. No.</p> <p>09:26 25 Q. Here's another name I will mispronounce. Do</p>
<p style="text-align: right;">23</p> <p>1 Q. Who is his current employer?</p> <p>2 A. Don't know.</p> <p>3 Q. Do you know where he currently resides?</p> <p>4 A. No.</p> <p>09:23 5 Q. Do you recognize the name John Rice?</p> <p>6 A. Yes.</p> <p>7 Q. Who is Mr. Rice?</p> <p>8 A. John Rice is the president of Rice's</p> <p>9 Appliances and a current member of MARTA.</p> <p>09:24 10 Q. Is this the same Mr. Rice who is the treasurer</p> <p>11 of MARTA and the current treasurer of the board?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you recognize the name Jeff</p> <p>14 Blumenthal?</p> <p>09:24 15 A. Yes.</p> <p>16 Q. Who is Mr. Blumenthal?</p> <p>17 A. He is the principal of B&B Appliances & TV in</p> <p>18 the Cleveland market and a former member of MARTA.</p> <p>19 Q. And when you say he's a principal of B&B</p> <p>09:24 20 Appliances, he's currently a principal of B&B</p> <p>21 Appliances, correct?</p> <p>22 A. He was a principal when he left MARTA, and I</p> <p>23 don't know if anything has changed. I haven't kept up</p> <p>24 with him since he left.</p> <p>09:25 25 Q. Any understanding as to where he resides</p>	<p style="text-align: right;">25</p> <p>1 you recognize the name Jodie Yalkin [ph]?</p> <p>2 A. I think that's pretty close.</p> <p>3 Q. Thank you.</p> <p>4 A. Yes, I recognize the name.</p> <p>09:26 5 Q. And who is Jodie Yalkin?</p> <p>6 A. She was a finance manager at MARTA prior to</p> <p>7 John Ross.</p> <p>8 Q. Do you know who her current employer is?</p> <p>9 A. No.</p> <p>09:26 10 Q. Do you know where she currently resides?</p> <p>11 A. No.</p> <p>12 Q. Do you recognize the name Catherine O'Donnell?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Catherine O'Donnell?</p> <p>09:27 15 A. The comptroller following Wendy.</p> <p>16 Q. This is Wendy Pitts?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know who Ms. O'Donnell's current</p> <p>19 employer is?</p> <p>09:27 20 A. No.</p> <p>21 Q. And do you know where Ms. O'Donnell currently</p> <p>22 resides?</p> <p>23 A. No.</p> <p>24 Q. Mr. Thompson, do you understand that the</p> <p>09:27 25 testimony you're giving today is binding on MARTA with</p>

<p style="text-align: right;">26</p> <p>1 respect to the 32 topics listed in this notice of 2 deposition? 3 A. Yes. 4 Q. Did you bring any documents with you today? 09:27 5 A. No. 6 Q. Do you currently work at MARTA? 7 A. Yes. 8 Q. And what is your title? 9 A. Managing director and general manager. 09:28 10 Q. How long have you held that position? 11 A. Since November of 2006. 12 Q. What are your responsibilities in that 13 position? 14 A. My duties are to manage and direct the sales 09:28 15 and communication activities for the MARTA membership. 16 We currently do business as Resource Plus, which is a 17 marketing handle for MARTA. 18 Q. And where do you work in MARTA? Where is the 19 office location? 09:29 20 A. I work at my office from home. My home is 21 here in Florida, Englewood, Florida. 22 Q. To whom do you report? 23 A. To the president of the board of directors. 24 Q. And who's that? 09:29 25 A. Tom Balistreri currently.</p>	<p style="text-align: right;">28</p> <p>1 Q. Scherer. Thank you. 2 A. He is the owner and principal of A-1 3 Appliance. 4 Q. Who is Mr. Frank? 09:31 5 A. He is the owner and principal of LH Brubaker. 6 Q. How about Mr. Lane? 7 A. The owner and principal of The Stereo Shop. 8 Q. Does that stereo shop have a name? 9 A. That's the name of his business. 09:31 10 Q. Oh, oh, oh. It's called The Stereo Shop. I 11 understand. Thank you. 12 Who is Mr. Webb? 13 A. He's the owner and principal of A&B TV. 14 Q. And who is Mr. Crabtree? 09:31 15 A. He's the owner and principal of Crabtree 16 Furniture and Appliances. 17 Q. Talking about these other members of the board 18 of directors, does that refresh your recollection as to 19 who the missing two are? 09:32 20 A. No. It may come to me later, but it just 21 doesn't pop into my head right now. I'm just trying to 22 see if I can put the names and faces together. 23 Q. Has it always been the case that members of 24 the board of directors at MARTA were themselves in the 09:32 25 industry, in terms of owners or proprietors of whether</p>
<p style="text-align: right;">27</p> <p>1 Q. How many individuals are currently on MARTA's 2 board of directors? 3 A. Twelve. 4 Q. Twelve. Can you tell me who they are? 09:29 5 A. Tom Balistreri, John Rice, Sandy Quick, Julie 6 Abby, Jack Cameron, Steve Scherer, Tom Frank, David 7 Lane, Jeff Webb, Brent Crabtree. 8 Q. Say that first name again. 9 A. Brent Crabtree. 09:30 10 Q. Thank you. 11 A. How many do I have so far? 12 Q. That's ten, by my count. 13 A. I'm missing two, and I -- I'm searching. 14 Q. That's fine. Maybe you'll remember it later. 09:30 15 Who is Ms. Quick? 16 A. She is currently serving as the secretary of 17 the board of directors, and she is the owner of Wayne's 18 Appliance. 19 Q. Who is Ms. Abby? 09:30 20 A. She's the principal and owner of Appliance 21 Center Toledo. 22 Q. Who is Mr. Cameron? 23 A. He is the CEO of ARCA, Incorporated. 24 Q. Who is Mr. Sherman? 09:31 25 A. Scherer?</p>	<p style="text-align: right;">29</p> <p>1 it be appliance shops or electronics shops? Why is that 2 the case? 3 MR. SHAW: Object to the form. What's your 4 question? 09:32 5 THE WITNESS: I guess I don't understand the 6 question. 7 BY MR. LAU: 8 Q. We'll come back to that later. We'll come 9 back to that later. Okay. 09:33 10 Where did you work prior to coming to MARTA? 11 A. I worked at Maytag Company. 12 Q. For how long? 13 A. Thirty-two years. 14 Q. And in what capacity? 09:33 15 A. I served in a variety of capacities. I 16 started as a field sales manager and served in probably 17 five or six other capacities, ended as vice president of 18 sales. 19 Q. And what's your educational background? 09:33 20 A. I've got an undergraduate degree from 21 Morningside College. 22 Q. In what area? 23 A. Business and psychology. 24 Q. Any other degrees? 09:33 25 A. Yes.</p>

<p style="text-align: right;">30</p> <p>1 Q. And what other degrees?</p> <p>2 A. No other degrees.</p> <p>3 Q. No other degrees. Thank you.</p> <p>4 Mr. Thompson, are you familiar with the term</p> <p>09:34 5 "cathode ray tube"?</p> <p>6 A. Yes.</p> <p>7 Q. And what's your understanding of that term?</p> <p>8 What does that mean?</p> <p>9 A. Mostly it's referred to as CRT, and it was in</p> <p>09:34 10 the TVs that were sold back in the day prior to the flat</p> <p>11 panels.</p> <p>12 Q. Now, in your experience at MARTA, you have</p> <p>13 experience with respect to CRT televisions, correct?</p> <p>14 A. Somewhat.</p> <p>09:35 15 Q. Somewhat? Okay. What about CRT monitors,</p> <p>16 say, for example, computer monitors that had a CRT in</p> <p>17 it? Any experience with that in terms of purchasing,</p> <p>18 negotiating?</p> <p>19 A. No.</p> <p>09:35 20 Q. Was MARTA ever involved in the purchase or</p> <p>21 sale of CRT monitors?</p> <p>22 A. In a very small way at one time. And I think</p> <p>23 it -- it might have been a one-spot purchase.</p> <p>24 Q. Do you recall when this one-spot purchase took</p> <p>09:35 25 place?</p>	<p style="text-align: right;">32</p> <p>1 relevant time period. Does that make sense?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if at any point you're confused as</p> <p>4 to the time period I'm talking about, please let me know</p> <p>09:37 5 and I'll clarify it for you, okay?</p> <p>6 A. Okay.</p> <p>7 Q. To your knowledge, did MARTA have a</p> <p>8 document-retention policy during the relevant time</p> <p>9 period?</p> <p>09:37 10 A. Yes.</p> <p>11 Q. And what was that policy?</p> <p>12 A. The policy was the guidelines of the records</p> <p>13 that we were to retain.</p> <p>14 Q. What records were covered by that policy?</p> <p>09:37 15 A. The business records that MARTA kept.</p> <p>16 Q. Pursuant to this document-retention policy,</p> <p>17 how long was MARTA required to retain these records?</p> <p>18 A. I think it was different depending -- it was</p> <p>19 more specific to the category or the area than it was</p> <p>09:38 20 one general hard, fast rule.</p> <p>21 Q. Did MARTA follow this document-retention</p> <p>22 policy?</p> <p>23 A. Yes.</p> <p>24 Q. Are there any instances when MARTA deviated</p> <p>09:38 25 from this policy?</p>
<p style="text-align: right;">31</p> <p>1 A. No.</p> <p>2 Q. Do you recall the size of this one-spot</p> <p>3 purchase?</p> <p>4 A. No.</p> <p>09:35 5 Q. Could you give a good-faith estimate as to the</p> <p>6 number of CRT monitors involved in that purchase? Was</p> <p>7 it less than five?</p> <p>8 A. Probably more than five. Probably less than a</p> <p>9 thousand.</p> <p>09:36 10 Q. Okay.</p> <p>11 A. Yeah.</p> <p>12 Q. Do you recall -- what's your understanding of</p> <p>13 the word "vendor" as MARTA uses that term?</p> <p>14 A. The people that we bought product from.</p> <p>09:36 15 Q. Okay. Do you recall the vendor who was</p> <p>16 involved in that one-time spot purchase of CRT monitors?</p> <p>17 A. No.</p> <p>18 Q. I think we discussed it before. Do you recall</p> <p>19 the time period when this took place?</p> <p>09:36 20 A. No.</p> <p>21 Q. Mr. Thompson, the Complaint that MARTA filed</p> <p>22 covers a long time period, from March 1, 1995, to</p> <p>23 November 25, 2007. Rather than reiterating that long</p> <p>24 time period over and over today, I'm just going to</p> <p>09:37 25 define that long time period from 1995 to 2007 as the</p>	<p style="text-align: right;">33</p> <p>1 A. Not that I know of.</p> <p>2 Q. Is it a formal, written policy?</p> <p>3 A. Yes.</p> <p>4 Q. You still have a copy of that policy in</p> <p>09:39 5 MARTA's files?</p> <p>6 A. Would have been in the data that was provided.</p> <p>7 Q. Provided to whom?</p> <p>8 A. The lawyers.</p> <p>9 Q. Okay. Thank you.</p> <p>09:39 10 A. In the request.</p> <p>11 Q. And this document-retention policy, has it</p> <p>12 changed over time?</p> <p>13 A. I'm sure it changed over time. It hasn't</p> <p>14 changed since I've been there.</p> <p>09:39 15 Q. Mr. Thompson, do you recall when MARTA first</p> <p>16 filed a lawsuit in this case? Do you recall the month</p> <p>17 and the year?</p> <p>18 A. No.</p> <p>19 Q. Does November 2011 -- does that ring a bell?</p> <p>09:39 20 A. That sounds --</p> <p>21 Q. Sounds about right?</p> <p>22 A. Yeah.</p> <p>23 Q. When MARTA commenced this lawsuit, did MARTA</p> <p>24 issue any sort of document hold or litigation hold to</p> <p>09:40 25 its employees? That is to say, did MARTA tell its</p>

<p style="text-align: right;">34</p> <p>1 employees, don't destroy any documents that might be</p> <p>2 relevant to this case? Do you recall any such</p> <p>3 instruction going out?</p> <p>4 A. Did MARTA?</p> <p>09:40 5 Q. Yes.</p> <p>6 A. No. MARTA did not.</p> <p>7 Q. Have there been any documents destroyed at</p> <p>8 MARTA that relate to CRTs since November of 2011?</p> <p>9 A. Not to my knowledge.</p> <p>09:40 10 Q. And do you understand that the parties in this</p> <p>11 case have sent requests for production of documents to</p> <p>12 MARTA?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall seeing those?</p> <p>09:41 15 A. Uh-huh.</p> <p>16 Q. In responding to those requests, where did</p> <p>17 MARTA look for potentially responsive documents?</p> <p>18 A. In our records.</p> <p>19 Q. And where are those records located?</p> <p>09:41 20 A. Today or then?</p> <p>21 Q. Then.</p> <p>22 A. Okay. At that time, we had an office in</p> <p>23 Scottsdale, Arizona.</p> <p>24 Q. Were the records stored in that Scottsdale,</p> <p>09:41 25 Arizona, office?</p>	<p style="text-align: right;">36</p> <p>1 A. AOL was to do the e-mails.</p> <p>2 Q. And did MARTA itself keep a record of those</p> <p>3 e-mails sent and received by AOL?</p> <p>4 A. Would have been on the server.</p> <p>09:44 5 Q. You mentioned -- you alluded to the fact that</p> <p>6 the documents that were stored in Scottsdale in November</p> <p>7 2011, but that may have been changed. Where are MARTA's</p> <p>8 CRT-related documents? Where are they currently stored?</p> <p>9 A. Our attorneys asked for relevant documents,</p> <p>09:44 10 and we sent them to our attorneys.</p> <p>11 Q. How many documents did you send to your</p> <p>12 attorneys?</p> <p>13 A. Everything they requested. I don't know.</p> <p>14 Q. In terms of -- do you know what a banker's box</p> <p>09:44 15 is?</p> <p>16 A. Yeah.</p> <p>17 Q. For the hard documents, give me an equivalent</p> <p>18 in terms of number of banker's boxes that you sent to</p> <p>19 your attorneys.</p> <p>09:45 20 A. I was not physically there to see it, but it</p> <p>21 was a couple hundred dollars of shipping. That's as</p> <p>22 much as I can tell you.</p> <p>23 Q. Do you have any understanding as to the amount</p> <p>24 of electronic data that was sent to your attorneys?</p> <p>09:45 25 A. Two servers.</p>
<p style="text-align: right;">35</p> <p>1 A. Yes.</p> <p>2 Q. Were records stored anywhere else other than</p> <p>3 that Scottsdale, Arizona, office?</p> <p>4 A. No.</p> <p>09:41 5 Q. And when you say "records," do you mean just</p> <p>6 physical hard documents, or do you mean electronically</p> <p>7 stored documents, as well?</p> <p>8 A. Both.</p> <p>9 Q. During the relevant time period, did MARTA</p> <p>09:42 10 employees store documents on PCs, personal computers?</p> <p>11 A. MARTA had a network of computers. They had a</p> <p>12 few PCs. Most of the computers were networked in</p> <p>13 workstation -- or in the workstations in the office.</p> <p>14 Q. And where -- for this network system, where</p> <p>09:42 15 were the documents stored? Were they stored on</p> <p>16 individual computers, or were they stored on some sort</p> <p>17 of central server?</p> <p>18 A. It went to the central server.</p> <p>19 Q. And do those electronic records on the central</p> <p>09:43 20 server that existed during the relevant time period, do</p> <p>21 those still exist or did they exist in November 2011 at</p> <p>22 the Scottsdale, Arizona, office?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall what program MARTA used during</p> <p>09:43 25 the relevant time period to send and receive e-mails?</p>	<p style="text-align: right;">37</p> <p>1 Q. Is it fair to say that if a CRT-related</p> <p>2 document existed at MARTA on November of 2011, would</p> <p>3 that document still exist today?</p> <p>4 A. Yes.</p> <p>09:46 5 Q. Have you ever heard of the name MARTA Group,</p> <p>6 Incorporated?</p> <p>7 A. I've heard of MARTA Cooperative of America.</p> <p>8 The group -- what did you say it was?</p> <p>9 Q. MARTA Group, Incorporated. Have you heard of</p> <p>09:46 10 that entity?</p> <p>11 A. If it's different than MARTA Cooperative of</p> <p>12 America, I have not heard that. We may have been</p> <p>13 referred by people as that.</p> <p>14 Q. Does MARTA have organizational charts?</p> <p>09:46 15 A. Not today.</p> <p>16 Q. During the relevant time period, did MARTA</p> <p>17 have organizational charts?</p> <p>18 A. I don't know.</p> <p>19 Q. Who owns MARTA?</p> <p>09:47 20 A. The shareholders.</p> <p>21 Q. Who are the shareholders?</p> <p>22 A. The members.</p> <p>23 Q. And what is a member?</p> <p>24 A. Would be a retailer.</p> <p>09:47 25 Q. Any type of retailer?</p>

<p style="text-align: right;">38</p> <p>1 A. An approved retailer that was approved by the 2 board of directors for membership after submitting their 3 application. 4 Q. What -- during the relevant time period, what 09:47 5 were the criteria for a retailer to be approved by the 6 board of directors to be a member of MARTA? 7 A. There were no written or firm rules. They 8 were basic guidelines that were followed. 9 Q. And what were those guidelines? 09:48 10 A. The general guideline was a retailer in the 11 major appliance/consumer electronics/furniture and 12 bedding business -- we typically sought one retailer in 13 each market. And we typically sought the best 14 full-service type of retailer in each market. 09:48 15 Q. And how were markets determined? 16 A. They're loosely defined, but Tampa would be 17 considered a market. Buffalo would be considered a 18 market. 19 Q. When a retailer was approved by the board of 09:49 20 directors to become a member of MARTA, was that retailer 21 required to sign any sort of agreement with MARTA? 22 A. Yes. 23 Q. And what did that agreement provide? What 24 were the key parts of that agreement? 09:49 25 A. Well, it was a membership agreement that had</p>	<p style="text-align: right;">40</p> <p>1 of MARTA determined? 2 A. The membership, at large, voted on the board 3 of directors. 4 Q. MARTA is organized under the laws of Michigan; 09:52 5 is that correct? 6 A. Yes. 7 Q. During the relevant time period -- remember, 8 this is 1995 to 2007 -- where did MARTA have its 9 principal place of business? 09:52 10 A. In the early stages -- I'm sorry. MARTA moved 11 to Scottsdale in 1991. So during the relevant period, 12 it would have been in Scottsdale, Arizona. 13 Q. During the relevant period, did MARTA have 14 offices other than in Scottsdale, Arizona? 09:53 15 A. Yes. 16 Q. Where were these offices located? 17 A. There was one office, and it was located in 18 New Jersey. 19 Q. How many people were employed at that office? 09:53 20 A. Warren Mann lived in New Jersey and worked out 21 of that office. He also was responsible for the 22 Scottsdale, Arizona, office. So he worked out of both 23 offices. And he had, from time to time, administrative 24 help in the New Jersey office. Might have been part 09:54 25 time. So that can give you an idea of the employee</p>
<p style="text-align: right;">39</p> <p>1 the financial costs put out, and it had the rights of a 2 shareholder spelled out. 3 Q. Anything else? 4 A. I don't think so. I think that's it. 09:49 5 Q. You made reference to financial costs. What 6 does that mean? 7 A. Each member was assessed dues on an annual 8 basis. And the other part of it was the -- each member 9 was required to buy one share of MARTA stock. 09:50 10 Q. Were all shares of MARTA owned by members? 11 A. Yes. 12 Q. How were annual dues determined? 13 A. Generally speaking, dues were considered part 14 of the revenue, and the operation required so much 09:51 15 revenue to continue its operations. And dues were 16 determined by how much everybody would need to 17 contribute to keep the overall operation functional. 18 Q. Was it the -- did every -- did every member 19 have to pay the same amount of dues, or did it vary 09:51 20 member by member? 21 A. Everyone paid the same amount of dues. 22 Q. But the amount of dues might change from year 23 to year based on the needs of MARTA, correct? 24 A. Potentially, yes. 09:51 25 Q. How was membership on the board of directors</p>	<p style="text-align: right;">41</p> <p>1 count for that office. 2 Q. Other than in Scottsdale and in New Jersey, 3 did MARTA have offices anywhere else during the relevant 4 time period? 09:54 5 A. No. 6 Q. Where did the negotiations for purchases take 7 place, the Scottsdale office or the New Jersey office? 8 A. A variety of places. They might have taken 9 place at the MARTA offices. They might have taken place 09:54 10 at the vendor's office. They might have taken place at 11 various trade shows or meetings. 12 Q. In your view, what was the purpose of MARTA 13 during the relevant time period? 14 A. The purpose of MARTA was to utilize the 09:55 15 collective volume of its members to purchase product at 16 the most favorable acquisition cost possible for its 17 members. 18 Q. So what types of products would MARTA buy? 19 A. MARTA bought appliances, consumer electronics. 09:56 20 Q. Anything else? 21 A. I mentioned that computers, but that was -- I 22 think that was a one-shot deal that failed. 23 Q. Would it be fair to say that MARTA would buy 24 these products on behalf of its members? 09:56 25 A. Yes.</p>

<p style="text-align: right;">42</p> <p>1 Q. Okay. And it would also be fair to say that 2 members could buy products from sources other than 3 MARTA. 4 A. Yes. 09:56 5 Q. And when MARTA would sell products, it would 6 sell its products exclusively to its members; is that 7 right? 8 A. Yes. 9 Q. MARTA would not make any sales to the public, 09:57 10 correct? 11 A. No. With one explanation. MARTA did sell to 12 its employees. And if I say friends, vendors. We might 13 sell a TV to an appliance vendor, things like that. 14 Q. This one exception you're talking about, it 09:57 15 would account for a very small portion of MARTA's 16 business? 17 A. Yes. I just wanted to be on the record that 18 there might have been a few accommodation-type sales, 19 but there wasn't a retail presence. 09:57 20 Q. And MARTA would not sell -- other than this 21 one small exception you talked about, MARTA would not 22 sell anything to nonmember companies, correct? 23 A. Correct. 24 Q. So if I understand what you're saying, Mr. 09:58 25 Thompson, the general idea is that members were trying</p>	<p style="text-align: right;">44</p> <p>1 A. MARTA's competitors were other sources of 2 distribution. MARTA's members' competitors were other 3 retailers in their specific market. So it's really two 4 different answers that I've provided there, but I -- 09:59 5 Q. We'll take one step at a time. So you said 6 that MARTA's competitors are other sources of 7 distribution. What does that mean? 8 A. If I give you an example, would that help -- 9 Q. Sure. 10:00 10 A. -- maybe? I think it -- Sony would have been 11 a competitor. Sony would not sell directly to MARTA. 12 Instead, Sony sold directly to our members. So they 13 would have been a competitor of MARTA's. 14 Q. Can you think of any other examples other than 10:00 15 Sony, other sources of distribution, that would be 16 considered MARTA's competitors during the relevant time 17 period? 18 A. Distribution practices changed -- I won't say 19 annually but with regularity during that period, so 10:00 20 there would have been different distributors in markets 21 that would have been competitors to MARTA. And then 22 certain manufacturers changed their distribution 23 practices. Some would go direct to the dealers. Some 24 would rather go through a distributor. 10:01 25 Q. Any other examples that can come to mind in</p>
<p style="text-align: right;">43</p> <p>1 to pool their purchasing power to get better deals 2 through MARTA than they could get by themselves. Was 3 that the general purpose of MARTA? 4 A. Yes. 09:58 5 Q. And by pooling their buying power 6 collectively, this would allow the members to compete 7 better with the so-called big-box retailers; is that 8 correct? 9 MR. SHAW: Object to the form. 09:58 10 MR. DIEL: Objection. Form. 11 This is Ike Diel on the phone. 12 BY MR. LAU: 13 Q. When I say "big-box retailer," Mr. Thompson, I 14 would be talking about the Best Buys of the world, the 09:58 15 Walmarts of the world, the Costcos of the world. 16 MR. SHAW: Same objection. 17 THE WITNESS: There were a lot of competitors 18 out there. The ones that you just named were -- 19 during the relevant time period weren't really even 09:59 20 major factors. So it just helped our own members 21 compete more favorably in the market. 22 BY MR. LAU: 23 Q. Who would the -- we'll talk about this later 24 on, but while we're on the topic, in your view, during 09:59 25 the relevant time period, who were MARTA's competitors?</p>	<p style="text-align: right;">45</p> <p>1 terms of MARTA's competitors? 2 A. I think the biggest electronics competitor at 3 the time was Circuit City. 4 Q. Why would you consider Circuit City to be a 10:01 5 competitor of MARTA? 6 A. They sold a lot of product. 7 Q. Any other examples that come to mind? 8 A. No. 9 Q. How about from the members' perspectives? 10:02 10 From their perspective, who did they view their 11 competition, if you have any understanding? 12 MR. SHAW: Object to the form. 13 MR. DIEL: Objection. Lack of foundation. 14 MR. SHAW: And also outside the scope of 10:02 15 30(b)(6). 16 BY MR. LAU: 17 Q. You can answer, Mr. Thompson. 18 A. Who were the competitors? Just so I have the 19 question again, did you ask who were the competitors? 10:02 20 Q. You said that -- when I asked the question 21 about who MARTA's competitors were, you said, well, you 22 really had to break it down into two parts: One, from 23 MARTA's perspective, the competitors were other sources 24 of distribution. And then you said, from the members' 10:02 25 perspective -- I think you made reference to other</p>

<p style="text-align: right;">46</p> <p>1 retailers.</p> <p>2 A. Yes. Our members, our retailers and other</p> <p>3 retailers within their market would have been their</p> <p>4 competitors.</p> <p>10:02 5 Q. Would that be any and all retailers in their</p> <p>6 market or just specific retailers?</p> <p>7 MR. SHAW: Object to the form and outside the</p> <p>8 scope.</p> <p>9 THE WITNESS: Generally, it would have been</p> <p>10:03 10 retailers that sold major appliances, consumer</p> <p>11 electronics, furniture and bedding.</p> <p>12 BY MR. LAU:</p> <p>13 Q. MARTA itself never manufactured any products;</p> <p>14 is that correct?</p> <p>10:03 15 A. Correct.</p> <p>16 Q. And MARTA exists only to serve the interests</p> <p>17 of its members; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. During the relevant time period, MARTA was a</p> <p>10:03 20 not-for-profit corporation, correct?</p> <p>21 A. Yes.</p> <p>22 Q. This meant that all revenues in excess of</p> <p>23 extensions would be distributed to members; is that</p> <p>24 correct?</p> <p>10:03 25 MR. DIEL: Objection. Form.</p>	<p style="text-align: right;">48</p> <p>1 tenure at MARTA, can you remember the number of times</p> <p>2 that MARTA actually made a distribution to its members?</p> <p>3 A. Yes.</p> <p>4 Q. How many times?</p> <p>10:06 5 A. Zero.</p> <p>6 Q. And why was that?</p> <p>7 A. There wasn't any appreciable revenue over</p> <p>8 expenses.</p> <p>9 Q. So we talked about the fact that MARTA was</p> <p>10:07 10 owned by its members, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And that also means that MARTA was also</p> <p>13 controlled by its members. Is that fair to say?</p> <p>14 MR. SHAW: Object to the form.</p> <p>10:07 15 THE WITNESS: No.</p> <p>16 BY MR. LAU:</p> <p>17 Q. And why do you say that?</p> <p>18 A. MARTA would have been controlled by its board</p> <p>19 of directors.</p> <p>10:07 20 Q. The board of directors consisted of members.</p> <p>21 A. Yes.</p> <p>22 Q. Exclusively consisted of members.</p> <p>23 A. Yes.</p> <p>24 Q. How often was the board of director elected?</p> <p>10:08 25 What was the typical term, if you recall?</p>
<p style="text-align: right;">47</p> <p>1 MR. SHAW: Object to the form.</p> <p>2 THE WITNESS: Generally speaking, yes.</p> <p>3 BY MR. LAU:</p> <p>4 Q. What would be -- if that's the general rule,</p> <p>10:04 5 what would be an exception to the rule?</p> <p>6 A. MARTA's expenses were fluid, so if you took a</p> <p>7 snapshot on a month-to-month basis, there might be more</p> <p>8 revenue than there would be expenses, but then you have</p> <p>9 anticipated expenses coming down the road. So the idea</p> <p>10:04 10 was to operate at a not-for-profit arrangement, but</p> <p>11 there wasn't a firm checkpoint at the end of December,</p> <p>12 we're going to -- any surplus revenue over expenses,</p> <p>13 we're going to return back to members.</p> <p>14 Q. So any distribution that would be made to</p> <p>10:04 15 MARTA's members would not occur at a specified period --</p> <p>16 specified time of the year; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And it sounds like they would just occur on an</p> <p>19 ad hoc basis; is that correct?</p> <p>10:05 20 A. Yes.</p> <p>21 Q. Okay. Other than retaining excess revenues to</p> <p>22 cover anticipated expenses, were there any other reasons</p> <p>23 why MARTA would retain such revenues?</p> <p>24 A. No.</p> <p>10:06 25 Q. And as you sit here today, recalling your</p>	<p style="text-align: right;">49</p> <p>1 A. Board of directors were elected for a</p> <p>2 three-year term. Elections were held each year. And</p> <p>3 the 12 board seats were staggered, to where four seats</p> <p>4 were up for election each year.</p> <p>10:08 5 Q. Did the size of the board remain constant over</p> <p>6 the relevant time period?</p> <p>7 A. Yes.</p> <p>8 Q. I take it it was the responsibility of the</p> <p>9 board of directors to elect officers of -- or designate</p> <p>10:08 10 officers for MARTA?</p> <p>11 A. Yes.</p> <p>12 Q. And I take it it was the responsibility of the</p> <p>13 board of directors to appoint the executive director of</p> <p>14 MARTA; is that correct?</p> <p>10:09 15 A. Yes.</p> <p>16 Q. During the relevant time period, did MARTA own</p> <p>17 any other entities, any subsidiaries?</p> <p>18 A. No.</p> <p>19 Q. During the relevant time period, did any other</p> <p>10:09 20 entity own MARTA?</p> <p>21 A. No.</p> <p>22 Q. Have you heard of the term "committee," as</p> <p>23 used in MARTA?</p> <p>24 A. Yes.</p> <p>10:09 25 Q. And what does that term mean to you?</p>

<p style="text-align: right;">50</p> <p>1 A. A collection of members gathered together to 2 provide input. 3 Q. How many committees were there at MARTA during 4 the relevant time period? 10:10 5 A. There were probably a variety of committees. 6 There were ongoing committees on appliances and a second 7 committee on electronics. 8 Q. And what was the purpose of these committees? 9 What would they do? 10:11 10 A. Provide input to the director on programs that 11 they would like to see developed with various vendors. 12 MR. LAU: I'd like to mark this document as 13 Exhibit 2482. And this is a one-page document, 14 CRT-MARTA-0000833. It is entitled "MARTA Committee 10:12 15 Lists." 16 (Exhibit 2482 marked for Identification.) 17 BY MR. LAU: 18 Q. Would you take a moment and review this 19 document? And once you're ready, please let me know. 10:12 20 A. Ready. 21 Q. Okay. Mr. Thompson, do you recognize this 22 document? 23 A. Yes. 24 Q. And what is this document? 10:12 25 A. It would have been a committee list. It's not</p>	<p style="text-align: right;">52</p> <p>1 A. Yes. 2 Q. Okay. Were these programs memorialized on 3 paper? 4 A. Some were; some were not. 10:14 5 Q. Why would there be a difference? Why would 6 sometimes a relationship -- why would it be memorialized 7 and other times not? 8 A. Occasionally, there were programs that were, 9 for lack of a better term, opportunity buys, very short 10:15 10 term. It might have been just at a show. And it might 11 have been just a product category. 12 Q. When you say "just a project category," what 13 do you mean by that? 14 A. It might have been a program just on 10:15 15 big-screen TVs. 16 Q. Once MARTA had a program in effect for a 17 specific vendor, would the program last for an infinite 18 period of time, or was it limited in terms of the time 19 of the program? 10:16 20 A. Generally, the programs -- the goal was to 21 have a program that would be in place for at least a 22 year. The specifics of the program were likely 23 negotiated each year. Any adjustments or changes would 24 then be modified to the program. 10:16 25 Q. You mentioned that some of the programs were</p>
<p style="text-align: right;">51</p> <p>1 dated, but at some point in time. 2 Q. Okay. Would MARTA generate these types of 3 documents in the normal course of its business? 4 A. Yes. 10:13 5 Q. Would MARTA rely on these types of documents? 6 A. Yes. 7 Q. Any reason to believe that this document is 8 not authentic? 9 A. No. 10:13 10 Q. So we were talking about the different types 11 of committees, and you mentioned the Appliance Committee 12 and the Electronics Committee. And looking at this 13 document, does it refresh your recollection that there 14 were other committees known as the Furniture Committee 10:13 15 and the Warranty Committee? 16 A. Yes. One person on each one. 17 Q. Okay. You mentioned that one purpose of the 18 committee would be to provide input to the director on 19 programs. Do you recall saying that? 10:14 20 A. Yes. 21 Q. Tell me what a program is. 22 A. A program would be the description of our 23 working relationship with a vendor. 24 Q. Would each vendor have a program associated 10:14 25 with it?</p>	<p style="text-align: right;">53</p> <p>1 memorialized on paper, correct? 2 A. Yes. 3 Q. In your mind, looking back, what's the ratio 4 of programs that were memorialized on paper versus 10:17 5 programs that were not memorialized on paper? 6 A. The majority would have been memorialized on 7 paper, a high percentage. 8 Q. In excess of 80 percent, perhaps? 9 A. Likely. 10:17 10 Q. In excess of 90 percent? 11 A. Probably. 12 Q. Probably. 13 Are those programs that were memorialized on 14 paper, what would it look like? What would the terms of 10:17 15 the program look like? 16 A. Well, they were all somewhat different, but it 17 was generally the business or dealer agreement that each 18 vendor utilized. So it would have been specific to the 19 -- to the vendor in the language that they used. 10:18 20 Q. You're looking at your watch, and I'm kind of 21 looking at my watch, as well. You've been on the record 22 for about an hour and 20 minutes. Would you like to 23 take a break? 24 A. If you want to, that'll be fine. 10:18 25 Q. Why don't we go for another ten minutes? How</p>

<p style="text-align: right;">54</p> <p>1 about that?</p> <p>2 A. That would be fine.</p> <p>3 Q. Okay. So we were discussing earlier</p> <p>4 committees and how committees would provide input to the</p> <p>10:18 5 director on programs. What type of input would the</p> <p>6 committees provide?</p> <p>7 A. They would provide what type of pricing would</p> <p>8 be needed, what would be the best -- what brands had the</p> <p>9 best acceptance in the market, what models within those</p> <p>10:19 10 brands seemed to have the best appeal, shipping</p> <p>11 quantities, reliability. I mean, if I say --</p> <p>12 reliability of the supply chain, people that were known</p> <p>13 to have a good reputation of being able to fulfill</p> <p>14 orders.</p> <p>10:19 15 Q. So if I understand this correctly, the</p> <p>16 committees provided input in terms of the pricing they</p> <p>17 wanted to see, the brands that they wanted to see, the</p> <p>18 models they wanted to see on these programs, perhaps</p> <p>19 other factors such as the shipping quantities they would</p> <p>10:20 20 like to see. And when you say reliability, how would --</p> <p>21 how would that idea manifest itself from the committee's</p> <p>22 perspective? What would the committees be telling the</p> <p>23 executive director about reliability?</p> <p>24 A. Reliability of the supply?</p> <p>10:20 25 Q. Yes.</p>	<p style="text-align: right;">56</p> <p>1 the same checklist of priorities that they would like to</p> <p>2 see from a vendor or in a program. And he would then</p> <p>3 have to try to assess and evaluate the things that were</p> <p>4 most important to the membership at large when he put</p> <p>10:22 5 the program together.</p> <p>6 Q. So the role of the executive director was not</p> <p>7 to decide for himself, you know, I like this particular</p> <p>8 brand; thus, I will establish a program. It was to</p> <p>9 assess, what does the membership at large want and try</p> <p>10:22 10 to implement that general desire; is that correct?</p> <p>11 MR. SHAW: Object to the form.</p> <p>12 THE WITNESS: The executive director had to</p> <p>13 have a program designed that the members would buy.</p> <p>14 So that was what he had to do. He utilized the</p> <p>10:23 15 input from the committee members to try and get</p> <p>16 the most sensible program put together that the</p> <p>17 members -- that ultimately the membership at large</p> <p>18 would buy.</p> <p>19 BY MR. LAU:</p> <p>10:23 20 Q. Is it fair to say that the committees were,</p> <p>21 for lack of a better word, representative of the</p> <p>22 membership at large?</p> <p>23 A. That was the goal.</p> <p>24 Q. And when you look at the committee lists,</p> <p>10:23 25 which lists would be responsible for providing input on</p>
<p style="text-align: right;">55</p> <p>1 A. Okay. Some of it would depend upon what --</p> <p>2 hearsay within the industry. Some of the members might</p> <p>3 have had experience with other suppliers, where they may</p> <p>4 have had excellent supply or poor supply. And if it was</p> <p>10:20 5 poor supply, generally that was brought out as that</p> <p>6 needed to be touched up.</p> <p>7 Q. How -- who decided what dealers would be part</p> <p>8 of any specific committee?</p> <p>9 A. First, the executive director would ask for</p> <p>10:21 10 volunteers. Then, from the pool of volunteers,</p> <p>11 occasionally -- in many cases, they would seek people</p> <p>12 who were already selling some of these brands, so they</p> <p>13 would have some experience.</p> <p>14 And the other part of it is they generally</p> <p>10:21 15 would rely on people who had pretty good volume within</p> <p>16 their business so they could get a feel for what kind of</p> <p>17 needs would be taken care of by the larger dealers.</p> <p>18 Q. Would the executive director adhere to the</p> <p>19 views of the committees with respect to pricing, brands,</p> <p>10:22 20 models and these other factors that we have discussed</p> <p>21 here?</p> <p>22 A. The executive director would solicit input</p> <p>23 from -- now, there's seven or eight people on the</p> <p>24 committee. And then he would need to process that</p> <p>10:22 25 information because all eight guys don't have exactly</p>	<p style="text-align: right;">57</p> <p>1 CRT televisions?</p> <p>2 A. The Electronics Committee.</p> <p>3 Q. How long would membership on a committee last?</p> <p>4 A. A good long time, but it would be dependent</p> <p>10:24 5 upon the vendor that they were negotiating with. If --</p> <p>6 and as I just look at one example here, DeSears, John</p> <p>7 Rice and Danny Sabo might have been on that Appliance</p> <p>8 Committee when we were putting together a program with</p> <p>9 General Electric, which was a big brand for them, but</p> <p>10:24 10 they might not having on the committee when we were</p> <p>11 putting together a program with Frigidaire because they</p> <p>12 did not sell Frigidaire. So from this collective list,</p> <p>13 people would go on and off, depending upon the vendor</p> <p>14 that we would be working with.</p> <p>10:25 15 Q. Can you recall an example where the -- let me</p> <p>16 take a step back.</p> <p>17 Who in MARTA was ultimately responsible for</p> <p>18 negotiating programs with vendors?</p> <p>19 A. The executive director.</p> <p>10:25 20 Q. Okay. Can you recall an instance where the</p> <p>21 executive director negotiated a program that was</p> <p>22 contrary to the wishes of the membership?</p> <p>23 MR. SHAW: Object to the form.</p> <p>24 THE WITNESS: No.</p> <p>10:25 25 BY MR. LAU:</p>

<p style="text-align: right;">58</p> <p>1 Q. When I ask that question, you understand what 2 I'm asking. 3 MR. SHAW: Object to the form. 4 THE WITNESS: Maybe I need some clarification 10:25 5 on what you're asking. 6 BY MR. LAU: 7 Q. You testified that it was the -- it was the 8 purpose of the executive director to negotiate programs 9 that the membership -- that the members would buy. Do 10:26 10 you remember that? 11 A. Yes. 12 Q. Okay. And so with that in mind, can you think 13 of an example where the executive director would 14 negotiate a program contrary to the wishes of the 10:26 15 membership? 16 MR. SHAW: Object to the form. Look, there's 17 a lot of members. So I object to the use of the 18 term "membership" in a single form. 19 MR. LAU: We'll take it step by step, then. 10:26 20 BY MR. LAU: 21 Q. Can you recall an instance where the executive 22 director negotiated a program that was contrary to the 23 wishes of the Electronics Committee, for example? 24 A. No. 10:26 25 Q. You believe that the Electronics Committee</p>	<p style="text-align: right;">60</p> <p>1 A. There was a guideline established in the 2 purchase agreement -- or in the application that a 3 certain percentage of their sales should come through 4 MARTA. 10:41 5 Q. Was this guideline binding on the members? 6 A. I don't know if it was binding. I'm not aware 7 of it ever being enforced. 8 Q. Were members of MARTA ever required to provide 9 MARTA with a letter of credit? 10:41 10 A. Yes. 11 Q. Were all members required to provide a letter 12 of credit? 13 A. All members that received any benefit from the 14 central bill system. 10:42 15 Q. And how much was the letter of credit? 16 A. The general rule is \$50,000. Some members 17 were asked to provide a larger letter of credit, 18 depending upon their annual buy. 19 Q. How many members did MARTA have during the 10:42 20 relevant time period? 21 A. The membership varied. It ranged from about 22 50 members to over 100 members, and then back down 23 closer to the 50 mark at the end of the period. 24 Q. When -- first let's talk about the first 10:43 25 point. When the membership increased from 50 to 100, in</p>
<p style="text-align: right;">59</p> <p>1 were representative of the membership as a whole, 2 correct? 3 A. Yes. 4 MR. LAU: I'll tell you what. It's about 10:26 5 10:30, and you've been testifying about an hour and 6 a half. Why don't we take a break and then we can 7 reconvene? 8 THE VIDEOGRAPHER: The time is 10:56 [sic]. 9 We're now off the record. 10:40 10 (Break taken at 10:26 a.m. to 10:39 a.m.) 11 THE VIDEOGRAPHER: The time is 10:39. This 12 begins Media Unit 2. We're back on the record. 13 BY MR. LAU: 14 Q. Mr. Thompson, earlier we were discussing the 10:40 15 requirements imposed on members when they joined MARTA. 16 And you made reference to annual dues that each member 17 was required to pay. Do you recall that testimony? 18 A. Yes. 19 Q. Other than the annual dues, was there any 10:40 20 initiation fee that members were required to pay upon 21 joining MARTA? 22 A. No. 23 Q. Was there any minimum purchasing requirement 24 imposed on members of MARTA during the relevant time 10:41 25 period?</p>	<p style="text-align: right;">61</p> <p>1 your mind, what was the -- what was the time period when 2 MARTA membership was at its peak, a hundred, in your 3 view? 4 A. In the late '90s, maybe going into 2000. 10:43 5 Q. Why was the MARTA membership so large at that 6 time? 7 A. Generally speaking, the central bill program 8 was more successful during that time period and, as a 9 result, it attracted more members. 10:44 10 Q. And you mentioned that the membership dropped 11 to 50 toward the end of the relevant time period; is 12 that right? 13 A. Yes. 14 Q. Why did the membership of MARTA decrease 10:44 15 during this time period? 16 A. The central bill program was ending and, at 17 that time, MARTA forged a relationship with 18 AVB/BrandSource, which was a competitive buying group. 19 Q. When members would leave MARTA, they could no 10:45 20 longer utilize MARTA's programs, correct? 21 A. Correct. 22 Q. Would these departing members have any 23 continuing relationship with MARTA at all? 24 A. No. 10:45 25 Q. Okay. Can you think of any instance where any</p>

<p style="text-align: right;">62</p> <p>1 MARTA member was ever expelled from MARTA?</p> <p>2 A. No.</p> <p>3 Q. Okay. Now, you mentioned a company</p> <p>4 AVB/BrandSource. When did MARTA's relationship with</p> <p>10:45 5 AVB/BrandSource begin?</p> <p>6 A. In 2006. I believe the first meeting was --</p> <p>7 member meeting was March of 2006.</p> <p>8 Q. And what happened at that member meeting?</p> <p>9 A. The plans for the alliance were discussed with</p> <p>10:46 10 the MARTA members.</p> <p>11 Q. And what were those plans?</p> <p>12 A. That MARTA was going to phase out the central</p> <p>13 bill program. MARTA was going to utilize the</p> <p>14 AVB/BrandSource warehousing program. MARTA would have</p> <p>10:46 15 access to all of the AVB programs. And if AVB had a</p> <p>16 program that -- or did not have a program that MARTA</p> <p>17 had, MARTA continued their programs. And MARTA was able</p> <p>18 to utilize AVB's broader array of member services and</p> <p>19 pass that on to the MARTA members.</p> <p>10:47 20 Q. And you described this relationship as an</p> <p>21 alliance. Does that mean that there was not -- it was</p> <p>22 not in the nature of any sort of merger between</p> <p>23 AVB/BrandSource and MARTA, correct?</p> <p>24 A. Correct.</p> <p>10:47 25 Q. So each company retained its separate</p>	<p style="text-align: right;">64</p> <p>1 A. No.</p> <p>2 Q. How long did this alliance last?</p> <p>3 A. It's ongoing. It remains in place today.</p> <p>4 May I pause for a moment? You said, did we</p> <p>10:49 5 provide any cash to AVB? We do provide. We pay</p> <p>6 national dues to AVB currently, and that has been in</p> <p>7 place since the beginning, but there was no upfront --</p> <p>8 Q. Oh, I see. And these national dues, are they</p> <p>9 paid on an annual basis?</p> <p>10:50 10 A. No.</p> <p>11 Q. And how frequent are these annual dues paid?</p> <p>12 A. Monthly.</p> <p>13 Q. Monthly. And during the 2006/2007 time</p> <p>14 period -- again, that's the very end of our relevant</p> <p>10:50 15 time period -- what were the monthly dues paid by MARTA</p> <p>16 to AVB?</p> <p>17 A. \$80 per month per member.</p> <p>18 Q. You mentioned that when the alliance with AVB</p> <p>19 was created, that that resulted in the end of the</p> <p>10:51 20 central billing program, correct?</p> <p>21 A. It signaled the beginning of the end.</p> <p>22 Q. Did the members search to replace central</p> <p>23 billing with something else?</p> <p>24 A. BrandSource had an option called Expert</p> <p>10:51 25 Warehouse which served as the replacement for the MARTA</p>
<p style="text-align: right;">63</p> <p>1 corporate existence; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. At this point in time, when this alliance came</p> <p>4 into effect, was MARTA at all ever recognized as a</p> <p>10:48 5 division of AVB?</p> <p>6 A. I think AVB, when they were showing it on</p> <p>7 their org charts or whatever, they showed MARTA as a</p> <p>8 division of BrandSource. BrandSource is the marketing</p> <p>9 name for AVB, Incorporated.</p> <p>10:48 10 Q. Did AVB -- after this alliance began, did AVB</p> <p>11 have a seat on MARTA's board of directors?</p> <p>12 A. No.</p> <p>13 Q. Once this alliance began, did MARTA have a</p> <p>14 seat on AVB's board of directors?</p> <p>10:48 15 A. Yes.</p> <p>16 Q. One seat or more seats?</p> <p>17 A. One.</p> <p>18 Q. Did -- after the alliance was created, did</p> <p>19 MARTA retain its own books and records?</p> <p>10:49 20 A. Yes.</p> <p>21 Q. Did MARTA provide AVB with any -- any cash or</p> <p>22 compensation to join this alliance?</p> <p>23 A. No.</p> <p>24 Q. Did AVB provide MARTA with any cash or other</p> <p>10:49 25 consideration to join this alliance?</p>	<p style="text-align: right;">65</p> <p>1 central bill program, with the exception of a couple of</p> <p>2 vendors.</p> <p>3 Q. Which couple of vendors are you referring to?</p> <p>4 A. Sharp and Toshiba.</p> <p>10:51 5 Q. And why did -- to your understanding, why did</p> <p>6 these two companies not utilize Expert Warehouse?</p> <p>7 A. At the time, they were not -- they did not</p> <p>8 have a business relationship with Expert Warehouse.</p> <p>9 Q. So during the 2006/2007 time period, the very</p> <p>10:52 10 end of the relevant time period, did both Toshiba and</p> <p>11 Sharp continue to utilize central billing at MARTA?</p> <p>12 A. Yes.</p> <p>13 Q. Any other companies utilize central billing</p> <p>14 during that time period?</p> <p>10:52 15 A. I think we ended JVC at the end of 2006, and</p> <p>16 that's the only one.</p> <p>17 Q. Now, earlier, Mr. Thompson, we discussed the</p> <p>18 fact that during the relevant time period, MARTA had</p> <p>19 programs with vendors that involved CRT televisions; is</p> <p>10:53 20 that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And earlier we discussed the fact that there</p> <p>23 was -- I think you described it as a one-shop isolated</p> <p>24 instance where -- it was a spot purchase of CRT</p> <p>10:53 25 monitors. Do you remember that testimony?</p>

<p style="text-align: right;">66</p> <p>1 A. Computer monitors?</p> <p>2 Q. Computer monitors. Correct. But that was an</p> <p>3 isolated --</p> <p>4 A. Yes.</p> <p>10:53 5 Q. -- example.</p> <p>6 Was there ever a point in time, Mr. Thompson,</p> <p>7 that MARTA set up a program with a vendor for the</p> <p>8 purchase of the CRT itself as opposed to the CRT as part</p> <p>9 of a television?</p> <p>10:54 10 A. No.</p> <p>11 Q. When was the -- what was the process for</p> <p>12 selecting a vendor?</p> <p>13 A. Well, we would assess the needs in the</p> <p>14 marketplace. A vendor would need to provide price</p> <p>10:54 15 points that were attractive for -- that our members</p> <p>16 would utilize. We'd like to have a good brand name, if</p> <p>17 possible. We'd like to have a product that was known to</p> <p>18 be reliable. And then we would like to be able to</p> <p>19 negotiate a good price to where our members could make a</p> <p>10:55 20 profit.</p> <p>21 Q. So a goal in selecting vendors was to select a</p> <p>22 vendor who would provide good prices so that the members</p> <p>23 could make profits. And that was a goal of MARTA,</p> <p>24 correct?</p> <p>10:55 25 A. That's correct.</p>	<p style="text-align: right;">68</p> <p>1 Q. Please do so.</p> <p>2 A. There were programs that the director would</p> <p>3 negotiate. And the requirement might have been, you</p> <p>4 need to buy a thousand of this particular model. And</p> <p>10:57 5 the director would look -- have a pretty good idea of</p> <p>6 how much each one of the members would ultimately buy.</p> <p>7 And he might say to John Rice, John, we have a hot deal</p> <p>8 on X, Y, Z TV. I can allocate 20 of these at this price</p> <p>9 to you. How many do you want? The member then had the</p> <p>10:58 10 choice to buy or not to buy, but the director basically</p> <p>11 provided the guidance on how much they could get --</p> <p>12 Q. I see.</p> <p>13 A. -- on some of those buys.</p> <p>14 Q. Was there ever an instance where MARTA would</p> <p>10:58 15 decide for the member, hey, guess what? You're going to</p> <p>16 buy, you know, a thousand units of this?</p> <p>17 MR. SHAW: Object to the form.</p> <p>18 THE WITNESS: Where you had to buy --</p> <p>19 BY MR. LAU:</p> <p>10:58 20 Q. Correct.</p> <p>21 A. -- a thousand of a unit? No.</p> <p>22 Q. And that's because it was ultimately the</p> <p>23 members' decision to decide whether to purchase and how</p> <p>24 much to purchase.</p> <p>10:59 25 MR. SHAW: Object to the form.</p>
<p style="text-align: right;">67</p> <p>1 Q. Who had ultimate authority to select vendors?</p> <p>2 A. To select members?</p> <p>3 Q. To select vendors.</p> <p>4 A. Vendors. Oh. The executive director had the</p> <p>10:55 5 final say on all those things.</p> <p>6 Q. Would the executive director consult with the</p> <p>7 various committees for purposes of selecting vendors?</p> <p>8 A. Sure.</p> <p>9 Q. Can you think of an instance where the</p> <p>10:56 10 executive director selected a vendor contrary to the</p> <p>11 wishes of a committee?</p> <p>12 A. No.</p> <p>13 Q. Now, once a program was set up, it was the</p> <p>14 decision of each individual member whether to place an</p> <p>10:56 15 order pursuant to a specific program, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it was the decision of each individual</p> <p>18 member to decide when to place an order, correct?</p> <p>19 A. Yes.</p> <p>10:57 20 Q. And it was the decision of each individual</p> <p>21 member to decide the specific quantity to purchase under</p> <p>22 a specific program, correct?</p> <p>23 A. Yes.</p> <p>24 Now, I do want to add a little bit of</p> <p>10:57 25 clarification on that last answer.</p>	<p style="text-align: right;">69</p> <p>1 BY MR. LAU:</p> <p>2 Q. With the exception of a few of these special</p> <p>3 programs that were set up so that if you bought, you had</p> <p>4 to buy a thousand units at a time, right?</p> <p>10:59 5 MR. SHAW: Object to the form.</p> <p>6 THE WITNESS: Would you re -- give me the</p> <p>7 question again.</p> <p>8 BY MR. LAU:</p> <p>9 Q. Okay. So it was ultimately the members'</p> <p>10:59 10 decision to participate in a specific program and to</p> <p>11 make purchases pursuant to a specific program, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And when the members were deciding to</p> <p>14 participate in a specific program, the members would</p> <p>11:00 15 decide which brand to select, correct, in terms of --</p> <p>16 let me take a step back.</p> <p>17 Say you had two separate programs for Toshiba</p> <p>18 and Sharp.</p> <p>19 A. Yes.</p> <p>11:00 20 Q. And it would be a member's decision whether to</p> <p>21 participate and buy under either program at all, right?</p> <p>22 A. Yes.</p> <p>23 Q. And it would be the member's decision to</p> <p>24 decide, as between the Toshiba program and the Sharp</p> <p>11:00 25 program, which program, you know, we buy under either</p>

<p style="text-align: right;">70</p> <p>1 Toshiba or Sharp or both. All of those decisions were 2 up to the members. Correct? 3 A. Yes. 4 Q. And once they decided to participate, say, for 11:00 5 example, in the Toshiba program, it was the members who 6 would decide, of all the models that are available under 7 the Toshiba program, these are the specific models I 8 want to purchase. That was the member's decision. 9 Correct? 11:01 10 A. Yes. 11 Q. During the relevant time period, can you 12 recall the brand names of CRT televisions that were part 13 of MARTA's programs? 14 A. It would have been Toshiba, Sharp, Zenith, 11:01 15 Philips, LG, Samsung. 16 Q. Do you recall any other names? 17 A. Hitachi, Panasonic, and I think JVC, but I 18 can't remember if that was a CRT or other -- 19 Q. Were there any programs involving Sony? 11:02 20 A. No. 21 Q. Did MARTA ever purchase CRT televisions from 22 distributors during the relevant time period? 23 A. Not as a rule, but there were some spot 24 purchases. 11:02 25 Q. What would dictate the decision to -- what</p>	<p style="text-align: right;">72</p> <p>1 programs with respect to these various vendors. Would 2 these relationships ever be memorialized in master 3 purchasing agreements or dealer agreements? 4 A. With other distributors? 11:05 5 Q. With vendors, generally. So when the 6 relationship with a vendor was established, was there 7 any sort of contract between MARTA and these vendors? 8 A. We would generally work under the vendor's 9 dealer agreement. 11:05 10 Q. Okay. Do you recall whether these dealer 11 agreements made reference to the price at which these 12 vendors would be selling their merchandise? 13 A. Generally, the agreements had more detail in 14 terms of the working relationship. It might have had 11:06 15 the terms, the shipping quantities and things like that. 16 A price sheet was generally a standalone document that 17 would have been attached as an addendum. 18 Q. Are these price sheets that were attached as 19 an addendum, these would be the prices that would be 11:06 20 offered by the vendors for the length of any specific 21 program; is that correct? 22 A. Well, generally, they had -- the price sheet 23 had the date that it was effective at the top, and it 24 was effective from that date forward until another price 11:07 25 sheet was prepared.</p>
<p style="text-align: right;">71</p> <p>1 would determine the decision to set up a program 2 involving a distributor as opposed to these other 3 vendors that we were talking about? 4 A. Generally, it would have been availability. 11:03 5 Q. And you mentioned that these were -- the 6 purchases involving distributors were spot purchases. 7 Does that mean there was no formal program set up for 8 distributors? 9 A. Whenever a program was put together, it would 11:03 10 have not been intended to be a long-term program. It 11 would have been more of a short-term solution. 12 Q. When you say "short-term solution," what 13 period of time are you thinking about? 14 A. It would depend upon the extent of the 11:03 15 availability issue. Normally, it would be 90 days or 16 hopefully less. 17 Q. When you say availability dictated the 18 decision to purchase from a distributor, would that be 19 the only criteria that you would use in selecting a 11:04 20 distributor? 21 A. I'm sure there might have been some other 22 factors that were involved. It could have been the 23 location of that distributor. But that would have been 24 the overriding factor. 11:04 25 Q. So we discussed -- we have been discussing</p>	<p style="text-align: right;">73</p> <p>1 Q. And who was responsible for negotiating these 2 prices with the vendors? 3 A. The director generally did the negotiation on 4 the pricing. 11:07 5 Q. And, typically, how often were prices 6 negotiated? 7 A. As the market needs dictated. Sometimes it 8 would be annually. Sometimes it would be more often 9 than that, depending upon how the retail prices would 11:07 10 change in the marketplace. 11 Q. Who signed these dealer agreements? Were they 12 signed by MARTA or by MARTA's members? 13 A. The director. 14 Q. The director. 11:08 15 Would the director also be responsible for 16 negotiating other terms of sales such as delivery and 17 freight and discounts? 18 A. Yes. 19 MR. LAU: We're hearing some feedback from 11:08 20 somebody on the phone, some paper shuffling. If 21 you could, please mute your phones unless you are 22 planning on making a specific objection. It's a 23 little bit disturbing. Thank you. 24 BY MR. LAU: 11:09 25 Q. When the director was negotiating with the</p>

<p style="text-align: right;">74</p> <p>1 vendors, would sometimes the director ask for additional 2 advertising funds? Do you recall anything of that 3 nature? 4 A. Yes. 11:09 5 Q. Okay. Under what circumstances? 6 A. Under virtually every negotiation. 7 Q. You mentioned that the -- these negotiations 8 between MARTA's director and the vendors would occur 9 sometimes on an annual basis, sometimes more frequently 11:09 10 based on the market. Who would initiate new 11 negotiations in terms of, hey, it's time for a new 12 price? Would that come from the vendors or would that 13 come from MARTA itself? 14 A. Well, both. If there were changes in the 11:10 15 market, it would generally come from MARTA to the 16 vendor. If the vendor was changing models or had a need 17 to increase prices or decrease prices, that would come 18 from them. 19 Q. When these negotiations occurred, where -- 11:10 20 where did they occur? What was the physical location, 21 if you recall? 22 A. It could have been at MARTA's office; it could 23 have been at the vendor's office; or it could have been 24 at the trade shows or other meetings. 11:11 25 Q. You mentioned trade shows. What trade shows</p>	<p style="text-align: right;">76</p> <p>1 Q. And what would occur at these MARTA Buy Fairs? 2 A. They would have a couple of days of member 3 meetings. Some of it would be focused on member 4 education, business practices and the like. And then 11:13 5 they would have MARTA corporate business. There would 6 be some discussion on that. And then there would be 7 time provided for vendors to show their product to the 8 members. And there would be -- generally speaking, the 9 vendors that attended the show would then provide 11:14 10 specials that the members could buy. 11 Q. Were these specials different from the vendor 12 programs that we have been discussing? 13 A. Yes. 14 Q. What portion of MARTA's members would 11:14 15 typically attend these MARTA Buy Fairs? 16 A. It would range. Generally about two-thirds of 17 the members would attend. 18 Q. And what portion of MARTA's vendors would 19 typically attend the MARTA Buy Fairs? 11:15 20 A. Virtually all of the members -- or all of the 21 vendors that participated in the central bill program 22 and occasionally some of the vendors that did not. 23 Q. Would the vendors who participated at the 24 MARTA Buy Fairs, would they provide any sort of cash 11:15 25 consideration for MARTA to help sponsor the fair?</p>
<p style="text-align: right;">75</p> <p>1 are you referring to? 2 A. Generally speaking, MARTA always attended the 3 Consumer Electronics Show. Sometimes MARTA would attend 4 the CEDIA -- it's C-E-D-I-A -- show. And there were 11:12 5 other industry events. 6 Q. Have you heard the term "vendor show" before? 7 A. Yes. 8 Q. What does that term mean? 9 A. That would be a show that a vendor would put 11:12 10 on and invite their customers. 11 Q. Did MARTA ever sponsor shows on its own? 12 A. Yes. 13 Q. Okay. And did MARTA have any sort of name to 14 describe these shows? 11:12 15 A. I think it was just called the MARTA Buy Fair. 16 Q. How often did these MARTA Buy Fairs occur? 17 A. Generally, MARTA held three shows annually: 18 one in the spring, one in the midyear, and one in the 19 fall. 11:13 20 Q. And where were these shows located? 21 A. In different portions of the country. 22 Generally, they had a show in -- near -- in Phoenix, 23 Phoenix area. That was a given. And then they would 24 move some of the other shows around. I remember they've 11:13 25 done shows in Dallas and other shows in Nashville.</p>	<p style="text-align: right;">77</p> <p>1 A. Yes. 2 Q. How much would they typically pay? 3 A. It would vary by vendor. And MARTA basically 4 tried to have a show fully funded through vendor 11:16 5 support. And in many cases, they tried to have the 6 expenses divvied up as close to equally to the volume 7 that the vendors would generate from the show. 8 Q. You mentioned that there were some vendors who 9 participated in central billing and some that did not. 11:16 10 A. Right. 11 Q. Why would a vendor decide not to participate 12 in central billing? 13 A. We had a -- there was an administrative fee 14 associated to the central bill program. 11:16 15 Q. How much was that administrative fee? 16 A. The -- generally, that fee was two percent. 17 Q. And so I understand this correctly, if a 18 vendor participated in central billing, for every sale 19 that was made under a program, the vendor would have to 11:17 20 contribute two percent of that sale to MARTA; is that 21 correct? 22 A. Yes. 23 Q. Did that administrative fee change over time? 24 A. The guideline did not. I believe it did -- 11:17 25 that was negotiated to some degree with certain vendors,</p>

<p style="text-align: right;">78</p> <p>1 part of the annual negotiation.</p> <p>2 Q. What portion of the vendors were successful in</p> <p>3 negotiating a different administrative fee; that is to</p> <p>4 say, an administrative fee that differed from two</p> <p>11:17 5 percent?</p> <p>6 A. A small amount. And there were offsets in the</p> <p>7 expectation of that fee, as well.</p> <p>8 Q. And when you think about the proportion of</p> <p>9 vendors who participated in central billing versus the</p> <p>11:18 10 proportion of vendors who did not participate in central</p> <p>11 billing, what portion of vendors actually participated</p> <p>12 in central billing?</p> <p>13 A. The lion's share of the volume that was done</p> <p>14 by our members.</p> <p>11:18 15 Q. When you say "lion's share," was that greater</p> <p>16 than 90 percent?</p> <p>17 A. Not that high. Probably more like 70 percent.</p> <p>18 Q. Mr. Thompson, for the two percent</p> <p>19 administrative fee, whatever the amount actually was,</p> <p>11:19 20 was any portion of that amount passed along to the</p> <p>21 members?</p> <p>22 A. Yes. A portion of that was utilized to</p> <p>23 develop core model discounts that were passed on to</p> <p>24 members.</p> <p>11:19 25 Q. All right. What proportion?</p>	<p style="text-align: right;">80</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Once -- let me take a step back.</p> <p>3 Would the director designate a core model by</p> <p>4 himself, or would he do so in consultation with</p> <p>11:22 5 committee members?</p> <p>6 A. Well, ultimately, the committee members would</p> <p>7 want core model allowances. You might have five guys</p> <p>8 and might have five different suggestions. And the</p> <p>9 director would have to process all of this input and</p> <p>11:23 10 determine what's the most effective use of that money?</p> <p>11 And it wasn't enough money to put it on all five models.</p> <p>12 You had to make a decision to put it on one model and</p> <p>13 then how much.</p> <p>14 Q. So in -- but the goal behind the core model</p> <p>11:23 15 designation was to allow the members to make more</p> <p>16 profit. Is that the goal?</p> <p>17 A. Yes.</p> <p>18 Q. How would that -- would there be a special</p> <p>19 designation for core models, in terms of -- can you</p> <p>11:24 20 recall in MARTA's books and records when something was</p> <p>21 designated as a core model, there would be some sort of</p> <p>22 code or annotation to differentiate core models from</p> <p>23 noncore models?</p> <p>24 A. I don't think there was any special</p> <p>11:24 25 annotation, but, I mean, the members knew the model</p>
<p style="text-align: right;">79</p> <p>1 A. It varied slightly. It was referred to as a</p> <p>2 roundup. And in the simplest way to describe it, we</p> <p>3 would take the program deductions that were negotiated</p> <p>4 in our program with a vendor, and we would come to a</p> <p>11:20 5 price that we would -- would ultimately pay the vendor.</p> <p>6 And then we would -- that price was typically -- would</p> <p>7 not end in an even dollar. It might be \$200 -- \$251.53.</p> <p>8 And we would then take the amount and round it up to,</p> <p>9 say, \$254. And that would be the price we would pass</p> <p>11:20 10 along to our members. The difference would be the -- of</p> <p>11 that roundup money would go into a merchandising budget</p> <p>12 that we would utilize to put a core model discount to</p> <p>13 our members.</p> <p>14 Q. What is a core model?</p> <p>11:21 15 A. It's a model that was determined by the</p> <p>16 director to be a -- after the core model discount was</p> <p>17 applied to it, a profitable -- profit opportunity for</p> <p>18 the member to compete in the marketplace.</p> <p>19 Q. So if I understand this correctly, the roundup</p> <p>11:21 20 money, that would apply to everything, and it would</p> <p>21 result in a pool of money in MARTA's merchandise budget.</p> <p>22 And then MARTA would utilize this pool of money to</p> <p>23 reduce the price of certain core models to its members.</p> <p>24 A. Yes.</p> <p>11:22 25 Q. Is that correct?</p>	<p style="text-align: right;">81</p> <p>1 numbers and the prices. So when they would see a core</p> <p>2 model discount applied to a model, that was kind of the</p> <p>3 identifier.</p> <p>4 Q. Maybe that answers my question.</p> <p>11:25 5 So the core model discount, that would be --</p> <p>6 that would be transparent in the sense that the members</p> <p>7 would understand that I am purchasing a core model. I</p> <p>8 am getting a separate core model discount as a result.</p> <p>9 A. Yes.</p> <p>11:25 10 Q. Mr. Thompson, have you ever heard of the</p> <p>11 phrase "holdback"?</p> <p>12 A. Yes.</p> <p>13 Q. And what does the word "holdback" mean to you?</p> <p>14 A. It was the money that was held back in this</p> <p>11:26 15 round -- rounding process that I described.</p> <p>16 Q. So holdbacks, would they always be positive or</p> <p>17 would they sometimes be negative?</p> <p>18 A. Well, I guess I don't quite understand the</p> <p>19 question.</p> <p>11:26 20 Q. Maybe we'll circle back and talk about this</p> <p>21 later. We'll talk about this more later on in the</p> <p>22 discussion.</p> <p>23 Did -- for the MARTA's members, were they all</p> <p>24 located in the United States, or were some located</p> <p>11:27 25 outside of the United States?</p>

<p style="text-align: right;">82</p> <p>1 A. All were in the United States.</p> <p>2 Q. Let's talk about central billing.</p> <p>3 When did central billing first begin at MARTA?</p> <p>4 A. Well, MARTA was formed in 1966, and it began</p> <p>11:28 5 early on. I don't know whether it's '66 or '67 or '68,</p> <p>6 but from its beginning.</p> <p>7 Q. And what is the purpose of central billing?</p> <p>8 A. To utilize -- to combine the member volume</p> <p>9 into a larger volume and utilize that one volume for</p> <p>11:28 10 purchasing power, negotiate the best possible pricing</p> <p>11 from the members -- or from the vendors.</p> <p>12 Q. How was it that -- how would MARTA negotiate</p> <p>13 better deals for those vendors that did not participate</p> <p>14 in central billing? I think you earlier -- earlier you</p> <p>11:29 15 said about 70 percent of the vendors participated in</p> <p>16 central billing. So for the 30 percent who did not</p> <p>17 participate in vendor billing, how would MARTA</p> <p>18 successfully negotiate good prices for its members?</p> <p>19 MR. SHAW: Object to the form.</p> <p>11:29 20 THE WITNESS: In that case, MARTA was not</p> <p>21 involved. The vendors negotiated directly with the</p> <p>22 members.</p> <p>23 BY MR. LAU:</p> <p>24 Q. In those instances where central billing was</p> <p>11:30 25 not used, would the members still be able to take</p>	<p style="text-align: right;">84</p> <p>1 a purchasing agent? Do you recall seeing that term in</p> <p>2 any document generated by MARTA itself?</p> <p>3 A. I don't remember the term.</p> <p>4 Q. So let's circle back to central billing.</p> <p>11:32 5 Sometimes they were -- well, sometimes the relationships</p> <p>6 between vendors and members where it was not going</p> <p>7 through central billing and, in those instances,</p> <p>8 whatever deal was struck between the members and the</p> <p>9 vendors was separate and apart from what MARTA was</p> <p>11:32 10 doing; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So sometimes members were purchasing</p> <p>13 from the vendors through central billing, and in -- and</p> <p>14 in these instances -- well, let's take it step by step.</p> <p>11:33 15 In terms of when a member wanted to make a purchase</p> <p>16 through central billing, what's the first step in the</p> <p>17 process? What would occur first?</p> <p>18 A. The member would decide to place an order,</p> <p>19 would be the first step.</p> <p>11:33 20 Q. How would -- how would the -- would the member</p> <p>21 place the order with MARTA or with a vendor?</p> <p>22 A. The way the system was set up, the order was</p> <p>23 communicated to the vendor.</p> <p>24 Q. By the member, correct?</p> <p>11:33 25 A. Yeah. The member to the vendor on the order</p>
<p style="text-align: right;">83</p> <p>1 advantage of the prices listed for a specific vendor</p> <p>2 programs?</p> <p>3 A. If we didn't have a program, they had an</p> <p>4 individual program negotiated for them, between the</p> <p>11:30 5 vendor and the member where MARTA wasn't involved in</p> <p>6 that piece.</p> <p>7 Q. Oh, I see. I see.</p> <p>8 So for -- what MARTA was doing for its</p> <p>9 members -- take a step back.</p> <p>11:30 10 What would be a fair way to characterize what</p> <p>11 MARTA was doing in terms of when you describe MARTA's</p> <p>12 business model, what would be a fair way to describe</p> <p>13 MARTA's activities?</p> <p>14 A. Combining the collective clout and volume of</p> <p>11:31 15 its membership to negotiate the lowest possible price</p> <p>16 with a vendor.</p> <p>17 Q. Would it be fair to describe MARTA as a buying</p> <p>18 cooperative?</p> <p>19 A. Yes.</p> <p>11:31 20 Q. Would it be fair to describe MARTA as a</p> <p>21 purchasing agent for its members?</p> <p>22 A. I'm not exactly sure what the definition of a</p> <p>23 "purchasing agent" is, but I think so.</p> <p>24 Q. Have you ever seen reference in any of the</p> <p>11:31 25 MARTA's books and records to MARTA describing itself as</p>	<p style="text-align: right;">85</p> <p>1 specs.</p> <p>2 Q. Okay. And would the member use something like</p> <p>3 a purchase order to place the order with the vendor?</p> <p>4 A. Yes.</p> <p>11:34 5 Q. And we discussed this before, but when that</p> <p>6 action occurred, MARTA had no foreknowledge that any</p> <p>7 specific member was placing any specific order with any</p> <p>8 specific vendor, correct?</p> <p>9 A. Sometimes, yes; sometimes, no.</p> <p>11:34 10 Q. When would MARTA know that an order was</p> <p>11 coming?</p> <p>12 A. MARTA paid for it, and the vendor -- the</p> <p>13 dealer couldn't place an order unless they had an open</p> <p>14 line of credit.</p> <p>11:34 15 Q. But before that -- take a step back.</p> <p>16 A. Yeah.</p> <p>17 Q. We agreed that when a member decides to place</p> <p>18 an order with a vendor, the member sends a purchase</p> <p>19 order to the vendor, right?</p> <p>11:34 20 A. Right.</p> <p>21 Q. And I know there are different steps that</p> <p>22 occur after that, but did MARTA know when purchase</p> <p>23 orders, you know, were actually being sent? Did MARTA</p> <p>24 know that, oh, tomorrow DeSears is going to send a</p> <p>11:35 25 purchase order to Toshiba?</p>

<p style="text-align: right;">86</p> <p>1 MR. SHAW: Object to the form.</p> <p>2 THE WITNESS: Again, it would depend upon the</p> <p>3 situation. DeSears may be at their credit limit;</p> <p>4 yet, they want to place an order. So they wanted</p> <p>11:35 5 to advise us --</p> <p>6 BY MR. LAU:</p> <p>7 Q. I see.</p> <p>8 A. -- that they are going to place an order. And</p> <p>9 then they would talk to us about getting their credit</p> <p>11:35 10 line cleared so that purchase order would be valid.</p> <p>11 Q. Take an example where somebody's placing an</p> <p>12 order that's within their credit limit. Would MARTA</p> <p>13 have any foreknowledge that that purchase order was</p> <p>14 being sent to the vendor?</p> <p>11:36 15 A. No.</p> <p>16 Q. And that's because it's the members' decision</p> <p>17 whether and what to buy from any specific vendor,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>11:36 20 Q. What occurs next in the process? Step one,</p> <p>21 the member submits the purchase order to the vendor.</p> <p>22 What occurs next?</p> <p>23 A. The vendor then would communicate the order to</p> <p>24 MARTA.</p> <p>11:36 25 Q. How would the vendor make that communication?</p>	<p style="text-align: right;">88</p> <p>1 Q. And what was that number called?</p> <p>2 A. It was called a J number.</p> <p>3 Q. What does J stand for?</p> <p>4 A. I think it stood for Joe, for Joe Verdi, the</p> <p>11:38 5 director. And it might have had a different name, but</p> <p>6 that's what I was always told.</p> <p>7 Q. So the significance of a J number meant that</p> <p>8 the vendor was authorized to ship to the member; is that</p> <p>9 right?</p> <p>11:39 10 A. To ship and to invoice MARTA.</p> <p>11 Q. And how was -- how was the J number</p> <p>12 communicated to the vendor? Was this also through EDI?</p> <p>13 A. Yes. It's the same process with communication</p> <p>14 coming to MARTA, would go back to the vendor.</p> <p>11:39 15 Q. What would occur next? The vendor receives a</p> <p>16 J number, and then what would the vendor do then?</p> <p>17 A. The vendor would then have authorization to</p> <p>18 ship the order. Generally, all of the orders had an</p> <p>19 as-soon-as-possible date. And they would run it through</p> <p>11:40 20 their logistics system and ship the order to the member.</p> <p>21 Q. So orders were shipped always to the members,</p> <p>22 correct?</p> <p>23 A. Yes. However, there were a few exceptions</p> <p>24 that were -- again, back to the accommodation sales or</p> <p>11:40 25 the unusual events, but the general practice was ship to</p>
<p style="text-align: right;">87</p> <p>1 A. Ultimately, it became an EDI transfer, so</p> <p>2 everything transferred electronically.</p> <p>3 Q. What about before -- when did EDI come into</p> <p>4 place?</p> <p>11:37 5 A. I don't know the specifics. I think it was in</p> <p>6 the '90s. I don't know the exact time.</p> <p>7 Q. So the vendor would inform MARTA via -- for</p> <p>8 most of the relevant time period, do you think it was</p> <p>9 EDI?</p> <p>11:37 10 A. Yes. Prior to that, it could have been fax.</p> <p>11 It would have been transferred to MARTA. The idea was</p> <p>12 immediately. As close to immediately as fit the</p> <p>13 definition of the day.</p> <p>14 Q. All right. I understand.</p> <p>11:37 15 What would MARTA do when it was informed by a</p> <p>16 vendor that a member would like to make a purchase?</p> <p>17 What occurred next?</p> <p>18 A. MARTA would then evaluate the line of credit</p> <p>19 for the member. And if the line of credit was</p> <p>11:38 20 sufficient, would then provide an authorization to the</p> <p>21 vendor that they could accept that purchase order. And</p> <p>22 MARTA would accept the invoice.</p> <p>23 Q. Would MARTA assign any particular number to</p> <p>24 these accepted orders?</p> <p>11:38 25 A. Yes.</p>	<p style="text-align: right;">89</p> <p>1 the member.</p> <p>2 Q. And we agreed before that these accommodation</p> <p>3 sales were very unusual; is that correct?</p> <p>4 A. Yeah.</p> <p>11:40 5 Q. Did MARTA ever keep merchandise in inventory?</p> <p>6 A. Yes.</p> <p>7 Q. When would this occur?</p> <p>8 A. In the '90s, MARTA had public warehousing.</p> <p>9 Q. And why would -- what type of merchandise was</p> <p>11:41 10 stored in the warehousing? Was it electronics or was it</p> <p>11 appliances or furniture?</p> <p>12 A. Most of it was appliances. There were</p> <p>13 occasions where some electronics were stored in the</p> <p>14 warehouse.</p> <p>11:41 15 Q. Okay. Let's take it step by step.</p> <p>16 For appliances, why was MARTA holding</p> <p>17 inventory of appliances in the 1990s?</p> <p>18 A. Again, that was a negotiated part of the</p> <p>19 program. There were some advantages. If you shipped</p> <p>11:42 20 full containers or truckloads of a product category and</p> <p>21 in some cases we would make a couple of stops to various</p> <p>22 members and then the balance of the load would deliver</p> <p>23 out to the warehouse. And we would then ship -- have</p> <p>24 that on hand to ship to other members.</p> <p>11:42 25 Q. The scenario you just described would apply</p>

<p style="text-align: right;">90</p> <p>1 mostly to appliances, and you said occasionally to</p> <p>2 electronics.</p> <p>3 A. Yes.</p> <p>4 Q. What proportion of inventory of merchandise</p> <p>11:42 5 consisted of electronics during the relevant time</p> <p>6 period?</p> <p>7 A. Small, probably less than five percent.</p> <p>8 Q. And the small, less than five percent, of</p> <p>9 electronics, did that include CRT televisions?</p> <p>11:43 10 A. Yes.</p> <p>11 Q. In those instances where CRT televisions were</p> <p>12 stored in inventory, had a member placed an order for</p> <p>13 those televisions?</p> <p>14 A. No. MARTA would have placed that order.</p> <p>11:43 15 Q. And would MARTA -- would MARTA pay for those</p> <p>16 CRT televisions?</p> <p>17 A. Ultimately, yes.</p> <p>18 Q. When it was stored in inventory, would the</p> <p>19 vendor issue an invoice to MARTA immediately for</p> <p>11:43 20 payment?</p> <p>21 A. It would have been the same invoice and same</p> <p>22 terms that -- with the other orders.</p> <p>23 Q. Okay.</p> <p>24 A. Just would have had a different "Ship To."</p> <p>11:44 25 Q. I see. And what was the rationale again for</p>	<p style="text-align: right;">92</p> <p>1 How would it be indicated? How would the</p> <p>2 transactional data reflect that a sale was being made</p> <p>3 out of inventory?</p> <p>4 A. It would be in the sales data.</p> <p>11:46 5 Q. Is there a special column?</p> <p>6 A. That, I don't know.</p> <p>7 Q. Do you recall any sort of special code?</p> <p>8 A. No.</p> <p>9 Q. Who would know? Would Ms. Fields know the</p> <p>11:46 10 answer to that?</p> <p>11 A. Yes.</p> <p>12 Q. Was there ever an instance where sales were</p> <p>13 made to a member and then somehow the merchandise was</p> <p>14 returned? It was defective or --</p> <p>11:47 15 A. Generally speaking, the merchandise would have</p> <p>16 been returned. Once it ships to the dealer, the dealer</p> <p>17 would refuse the shipment if there was some damages or</p> <p>18 whatever.</p> <p>19 Q. Sure.</p> <p>11:47 20 A. Now, there could have been some concealed</p> <p>21 damage. That would have been a onesie, twosie</p> <p>22 situation. And that would have been part of the program</p> <p>23 that I mentioned earlier today, the return allowance</p> <p>24 program, or it would have been an element of the overall</p> <p>11:47 25 vendor program.</p>
<p style="text-align: right;">91</p> <p>1 storing this merchandise in inventory?</p> <p>2 A. Well, appliances are big boxes, and our</p> <p>3 members didn't have as much -- they had just so much</p> <p>4 warehouse space. So MARTA, as a convenience, had public</p> <p>11:44 5 warehousing that would help the members so that they</p> <p>6 could take in more TVs than you could take in</p> <p>7 refrigerators. And that was the rationale behind it.</p> <p>8 Q. So, in your mind, you think that of all the</p> <p>9 merchandise that was inventoried, perhaps five percent</p> <p>11:44 10 or less was electronics, right?</p> <p>11 A. Yes.</p> <p>12 Q. And of that five percent or less that was</p> <p>13 electronics, what proportion do you think was CRT</p> <p>14 televisions?</p> <p>11:45 15 A. It would have been all of it because we</p> <p>16 discontinued the warehousing in ninety -- I think it was</p> <p>17 '95 or '96.</p> <p>18 Q. If CRT televisions were sold out of inventory</p> <p>19 in this manner, would that fact be reflected in MARTA's</p> <p>11:45 20 transactional data? Would that be stored somehow</p> <p>21 electronically?</p> <p>22 A. Yes.</p> <p>23 Q. So would it be fair to say that if we look</p> <p>24 through all the transactional data, there will be some</p> <p>11:45 25 sort of -- we can just take a step back.</p>	<p style="text-align: right;">93</p> <p>1 Q. So if merchandise had to be returned because</p> <p>2 it was defective, would the member send it directly to</p> <p>3 the vendor?</p> <p>4 A. To the point the vendor selected.</p> <p>11:48 5 Q. I see. But the member would not return such</p> <p>6 merchandise to MARTA, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And when did this practice of holding</p> <p>9 merchandise in inventory, do you recall what year it</p> <p>11:48 10 ended?</p> <p>11 A. I thought it was '95 or '96.</p> <p>12 Q. And let's just go back to CRT televisions that</p> <p>13 were held in inventory. Do you recall the length of</p> <p>14 time such televisions would have been held in inventory?</p> <p>11:49 15 A. No, but it would have been -- the goal would</p> <p>16 have been a very short period of time.</p> <p>17 Q. In your mind, what's a short period of time?</p> <p>18 A. Ninety days or less.</p> <p>19 Q. Do you recall where -- where the warehouses</p> <p>11:49 20 were located that held this inventory?</p> <p>21 A. There was one warehouse. It was in Chicago.</p> <p>22 Q. And what was the reason again for buying the</p> <p>23 merchandise that would be sent to inventory?</p> <p>24 A. Maybe I can give you an example.</p> <p>11:50 25 Q. Sure. That would be great, Mr. Thompson.</p>

<p style="text-align: right;">94</p> <p>1 A. This might help clear it up. 2 Earlier I mentioned we had three shows per 3 year. Each show, the vendors were expected to develop 4 some sort of a show special, so on and so forth. 11:50 5 Sometimes the negotiations would be, we have X number of 6 a certain model that we can sell to you at this price, 7 but you have to take them all. It might be a thousand. 8 You go through the show and you might sell 900 of them. 9 So the excess, if it was considered to be such a 11:50 10 smoking, hot deal, we would take it into the warehouse 11 in Chicago, and then we would reship it out. 12 Q. So if I understand what you're saying, Mr. 13 Thompson, this is in the nature of opportunity buys, a 14 deal too good to resist. 11:51 15 A. Yes. 16 MR. SHAW: Object to the form. 17 BY MR. LAU: 18 Q. We took a little detour there on inventory. 19 Let's go back to central billing. 11:51 20 So we talked about the various steps that 21 occur when a member decides to make a purchase. A 22 member submits the purchase order to the vendor. The 23 vendor notifies MARTA of that purchase order. We think 24 that this was done through EDI throughout the entire 11:51 25 relevant time period. Then MARTA would evaluate the</p>	<p style="text-align: right;">96</p> <p>1 A. That was negotiated as part of the vendor 2 program annually. Some vendors were 30 days. Some were 3 60 days. Some were 90 days. 4 Q. How long would members typically have to pay 11:54 5 MARTA? 6 A. It was generally 30 days. 7 Q. Was the expectation that members would pay 8 MARTA before MARTA pays vendors? 9 A. Yes. 11:54 10 Q. What would MARTA do with the money during -- 11 well, do you know what a float period is? 12 A. Yes. 13 Q. What would MARTA do with the money during the 14 float period; that is, the time between when it receives 11:54 15 payment from the members and the time that it pays 16 vendors? 17 A. It was put in the bank. 18 Q. Would it accrue interest? 19 A. Yes. 11:55 20 Q. Would MARTA ever take any security interest in 21 the members' purchases? 22 A. I guess I don't understand what "security 23 interest" -- if you can give me some definition of what 24 you mean by that. 11:55 25 Q. Have you ever heard of form UCC-1?</p>
<p style="text-align: right;">95</p> <p>1 creditworthiness of the member and then, if appropriate, 2 notify the vendor that the member is authorized to make 3 a sale and would assign a J number. And that would 4 indicate that, yes, this is an authorized sale. Do I 11:52 5 have the -- do I have the sequencing correct? 6 MR. SHAW: Object to the form. 7 THE WITNESS: Yes. 8 BY MR. LAU: 9 Q. Okay. And then what occurs -- we talked about 11:52 10 the fact that the vendor then ships the -- ships the 11 merchandise and that the normal way that would occur was 12 it would be shipped directly to the member. And then we 13 talked about that exception about the limited period of 14 time where MARTA held inventory. 11:52 15 All right. What would occur next? What 16 occurs after the vendor ships the product? 17 A. Well, the vendor, typically, once the product 18 ships, will invoice the product, and it would be 19 invoiced to MARTA. And then -- 11:53 20 Q. Go ahead. 21 A. And then what MARTA would do is MARTA would 22 put it into its payable process to pay the vendor and 23 also put it into its billing process to bill the member. 24 Q. How many days would MARTA typically have to 11:53 25 pay the vendor?</p>	<p style="text-align: right;">97</p> <p>1 A. Yes. 2 Q. Would those ever be issued? 3 A. Yes. 4 Q. In all instances? 11:55 5 A. It was an expected practice. 6 Q. Can you think of any instance where a member 7 would place an order and then cancel the order? Would 8 that ever occur? 9 A. Yes. I'm sure it did. 11:56 10 Q. And who would the member notify if it was 11 canceling an order? 12 A. Well, depending upon where they would be in 13 the process. You know, if it's been several days since 14 they placed the order, they would probably come back to 11:56 15 MARTA first and say, pull that J number. If it was 16 something they just transmitted last night that might 17 not have been transferred to MARTA, they might have 18 connected with the vendor first. 19 Q. When merchandise was shipped by the vendor to 11:56 20 the member, did MARTA incur any risk of loss during that 21 process? 22 A. Yeah. Yes. 23 Q. Did it always incur the risk of loss, or are 24 you just thinking of examples? 11:57 25 MR. SHAW: Object to the form.</p>

<p style="text-align: right;">98</p> <p>1 THE WITNESS: Well, yes, because the shipping 2 terms would be the same on every order. 3 (Exhibit 2483 was marked for Identification.) 4 BY MR. LAU: 11:57 5 Q. I'm going to show a different exhibit to you. 6 I'm going to mark as 2483, a document with a Bates 7 No. CRT-MARTA-0005185 and it's an e-mail chain. At the 8 top it has Aimee Fields in the "To" line. And the 9 "From" line, Emily Cook. And this is dated July 16th, 11:58 10 2004. Would you take a look at this document, Mr. 11 Thompson? And once you've had a look at it, let me 12 know. 13 A. It's a long string of e-mails. 14 Q. Let me point your attention in particular to 12:00 15 the first, second, the third page. And look at the 16 e-mail from Ed Johnson, who represents Sharp, to Rachel. 17 Have you had a chance to look at that? 18 A. Yes. 19 Q. Mr. Thompson, do you recognize this document? 12:01 20 A. No. 21 Q. Do you recall seeing documents like this at 22 MARTA? 23 A. No. 24 Q. Do you recall -- does this look like e-mails 12:01 25 that were sent by Aimee Fields, sent to and from Aimee</p>	<p style="text-align: right;">100</p> <p>1 Sharp. I think this is Sharp. 2 Q. Yes, it is. Correct. 3 A. So that could have been part of the Sharp 4 program. 12:02 5 Q. Can you think of specific examples where MARTA 6 itself actually bore the risk of loss? Merchandise was 7 shipped from the vendor to the member; something 8 happened along the way; and MARTA was on the hook by 9 itself? Can you think of a specific instance like that? 12:03 10 MR. SHAW: Object to the form. 11 THE WITNESS: I can't think of any specific 12 instances. 13 BY MR. LAU: 14 Q. Okay. If there were instances where MARTA 12:03 15 bore -- actually bore the risk of loss in an actual 16 transaction, would that be recorded somewhere in MARTA's 17 books and records? 18 A. Yes. 19 Q. And would that be recorded, for example, in 12:03 20 MARTA's transactional data? 21 A. I believe it would. 22 Q. Okay. So if we took a close look at the 23 documents produced by MARTA, all the hard-copy documents 24 and all the electronic documents produced by MARTA in 12:03 25 this litigation, and if we found no instance where MARTA</p>
<p style="text-align: right;">99</p> <p>1 Fields? 2 A. Yes. 3 Q. Okay. And did MARTA send and receive e-mails 4 in the normal course of its business? 12:01 5 A. Yes. 6 Q. And did MARTA rely upon e-mails for purposes 7 of conducting its business? 8 A. Yes. 9 Q. Do you have any reason to believe that this 12:01 10 document is not authentic? 11 A. No. 12 Q. So let's look again to the third page of the 13 document. It's from Mr. Johnson at Sharp. It's to 14 Rachel Greene. The subject is, "RE: Dealer Credit." 12:02 15 And then the e-mail is, "I suspect the goods have found 16 their way to the five finger alleyway. We will of 17 course issue credit, however, does the customer wish to 18 have a replacement delivery." 19 Do you see that? 12:02 20 A. Yes. 21 Q. Does this refresh your recollection that it 22 was the vendor who bore the risk of loss in case 23 something was lost when shipped from the vendor to the 24 member? 12:02 25 A. That might have been the understanding with</p>	<p style="text-align: right;">101</p> <p>1 actually bore the risk of loss during the relevant time 2 period, would it be fair for me to conclude that there 3 were no instances of MARTA bearing the risk of loss? 4 MR. SHAW: Object to the form. 12:04 5 THE WITNESS: There might not have been any 6 recorded. 7 BY MR. LAU: 8 Q. So you think it's possible for MARTA to bear 9 the risk of loss and yet not record that in its books 12:04 10 and records? 11 A. Not recorded as part of a loss. It might have 12 been offset in some other way. 13 Q. But it would be recorded somewhere in MARTA's 14 books and records, correct? 12:04 15 A. Yes. 16 Q. And if it's the case that we looked at all the 17 documents that were recorded by MARTA and there's no 18 indication, no written indication, of MARTA actually 19 bearing the risk of loss, it would be fair for me to 12:04 20 conclude that during this relevant time period, that 21 that simply did not occur, correct? 22 MR. SHAW: Object to the form. 23 THE WITNESS: It might not -- it might have 24 been taken care of in another way. It might not 12:05 25 have been cross-referenced to the loss as utilized</p>

<p style="text-align: center;">102</p> <p>1 in this instance.</p> <p>2 BY MR. LAU:</p> <p>3 Q. Okay. What written documents would require</p> <p>4 MARTA to bear the risk of loss? Would that be some sort</p> <p>12:05 5 of document that existed between the vendors and MARTA;</p> <p>6 for example, perhaps in the dealer agreements?</p> <p>7 A. Yes.</p> <p>8 Q. Where else would that obligation arise from?</p> <p>9 A. It was in the dealer agreements.</p> <p>12:05 10 Q. Anywhere else?</p> <p>11 A. No.</p> <p>12 MR. LAU: I think I want to show you another</p> <p>13 document right now.</p> <p>14 Well, the videographer informs me that we've</p> <p>12:07 15 gone for about another hour and a half. About two</p> <p>16 minutes left on the tape. Maybe now would be a</p> <p>17 good time to take a lunch break, and then we can</p> <p>18 begin after lunch.</p> <p>19 THE WITNESS: Okay.</p> <p>12:07 20 THE VIDEOGRAPHER: The time is 12:06. This</p> <p>21 ends Media Unit 2. We're now off the record.</p> <p>22 (Break taken from 12:06 p.m. to 12:52 p.m.)</p> <p>23 THE VIDEOGRAPHER: The time is 12:52. This</p> <p>24 begins Media Unit 3. We're back on record.</p> <p>12:53 25 BY MR. LAU:</p>	<p style="text-align: center;">104</p> <p>1 was Sharp that you mentioned; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So does that mean that the remaining</p> <p>4 MARTA members all started to utilize Expert Warehouse?</p> <p>12:55 5 A. Yes, or other warehouses.</p> <p>6 Q. Okay. What would some of those other</p> <p>7 warehouses be?</p> <p>8 A. Almo is -- that's A-L-M-O -- is a large one.</p> <p>9 DSI is another one. And then there are smaller local or</p> <p>12:56 10 regional warehouses. Climatic would be an example of</p> <p>11 one that serves the southeast.</p> <p>12 Q. Can you compare and contrast for me the</p> <p>13 similarities and differences between MARTA's central</p> <p>14 billing on the one hand and Expert Warehouse on the</p> <p>12:56 15 other?</p> <p>16 A. Well, Expert Warehouse physically has the</p> <p>17 product shipped from the vendor to Expert Warehouse, who</p> <p>18 then transfers that product to the member.</p> <p>19 Q. How do members -- how do MARTA members place</p> <p>12:57 20 orders using Expert Warehouse?</p> <p>21 A. There's an order portal that our members use.</p> <p>22 And it's all online. So they go online to the portal,</p> <p>23 sign in, place the order, and Expert Warehouse fills it.</p> <p>24 Q. So if I understand this correctly, the order</p> <p>12:57 25 that's placed by MARTA members is an order that's placed</p>
<p style="text-align: center;">103</p> <p>1 Q. Mr. Thompson, before the lunch break, we had a</p> <p>2 discussion about MARTA's central billing system. Do you</p> <p>3 recall that discussion?</p> <p>4 A. Yes.</p> <p>12:53 5 Q. And earlier in the day, we discussed the</p> <p>6 alliance that was formed between MARTA and AVB around</p> <p>7 about 2006. Do you recall that discussion?</p> <p>8 A. Yes.</p> <p>9 Q. And when we had that discussion, you mentioned</p> <p>12:53 10 the term "Expert Warehouse." And I think you mentioned</p> <p>11 that Expert Warehouse was somehow like a replacement</p> <p>12 somehow for expert billing. Did I catch that correctly?</p> <p>13 A. A replacement for the MARTA central billing.</p> <p>14 Q. Central billing. Yes.</p> <p>12:54 15 Can you explain how Expert Warehouse operated?</p> <p>16 A. Expert Warehouse operates very similar to a</p> <p>17 traditional warehouse, where they buy and take in</p> <p>18 product and sell it to members. The difference -- the</p> <p>19 fundamental difference between Expert Warehouse and a</p> <p>12:54 20 regular warehouse is Expert Warehouse only services the</p> <p>21 needs of BrandSource members.</p> <p>22 Q. After the Alliance was formed or the</p> <p>23 relationship was formed in 2006, I think you mentioned</p> <p>24 that the central billing declined, perhaps, rapidly with</p> <p>12:55 25 the exception of two companies: Toshiba and I think it</p>	<p style="text-align: center;">105</p> <p>1 with Expert Warehouse; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And so, in that sense, it's different from</p> <p>4 central billing because in central billing, the members</p> <p>12:57 5 would place an order with the vendors, correct?</p> <p>6 A. Yes.</p> <p>7 Q. After a MARTA member places an order with</p> <p>8 Expert Warehouse, what does Expert Warehouse do with</p> <p>9 that order, if you have any understanding?</p> <p>12:58 10 A. They go through the credit process like MARTA</p> <p>11 did, and then they schedule the order for shipment to</p> <p>12 the member. And in Expert Warehouse's case, they do not</p> <p>13 have open account terms with the members. Generally,</p> <p>14 everything is sold through a finance company.</p> <p>12:59 15 Q. So when you say no open account terms, do I</p> <p>16 understand you correctly that means that the member</p> <p>17 would pay the -- well, the finance company would pay the</p> <p>18 vendor, and then, at some point in time, the member</p> <p>19 would pay the finance company?</p> <p>12:59 20 A. Yes.</p> <p>21 Q. Is Expert Warehouse similar to central billing</p> <p>22 in the sense that, under both systems, it's the member</p> <p>23 who decides when to place an order? Are they similar in</p> <p>24 that respect?</p> <p>12:59 25 A. Yes.</p>

<p style="text-align: center;">106</p> <p>1 Q. Is Expert Warehouse similar to the MARTA 2 central billing system in the sense that the member, 3 under both systems, decides the quantity of merchandise 4 to order?</p> <p>13:00 5 A. Yes.</p> <p>6 Q. And is Expert Warehouse similar to the MARTA 7 central billing system in the sense that, under both 8 systems, it's the -- it's the member who decides the 9 timing in terms of when to place an order?</p> <p>13:00 10 A. Yes.</p> <p>11 Q. Mr. Thompson, are there any other differences 12 in your mind between the MARTA central billing system on 13 the one hand and the Expert Warehouse system on the 14 other?</p> <p>13:00 15 MR. SHAW: Object to the form. And also 16 outside the scope of this 30(b)(6).</p> <p>17 THE WITNESS: Would you give me the last part 18 of that question again?</p> <p>19 BY MR. LAU:</p> <p>13:00 20 Q. I'm trying to -- I'm trying to understand 21 from -- do you have any understanding of any additional 22 differences between the Expert Warehouse system and the 23 MARTA central billing system?</p> <p>24 MR. SHAW: Object to the form. He's not here 13:01 25 to testify about the expert system and that, so --</p>	<p style="text-align: center;">108</p> <p>1 THE VIDEOGRAPHER: The time is 1:01. We're 2 now off the record.</p> <p>3 (Break taken from 1:01 p.m. to 1:02 p.m.)</p> <p>4 THE VIDEOGRAPHER: The time is 1:02. We're 13:03 5 back on the record.</p> <p>6 MR. LAU: May I please ask the Court Reporter 7 to repeat the last question?</p> <p>8 (The previous question was read back by the 9 Court Reporter.)</p> <p>13:04 10 THE WITNESS: Not any specific additional 11 differences.</p> <p>12 BY MR. LAU:</p> <p>13 Q. How about any general differences?</p> <p>14 A. Generally, the prices were higher than what 13:04 15 our members experienced under the central bill system.</p> <p>16 Q. When you say prices are higher, you mean, the 17 prices -- the Expert Warehouse prices are higher?</p> <p>18 A. The prices that the members pay are higher 19 under Expert Warehouse arrangement than under the 13:04 20 arrangement we had with the central bill program.</p> <p>21 Q. Do you have any understanding as to whether 22 Expert Warehouse charges an administrative fee like that 23 charged under MARTA central billing?</p> <p>24 A. No.</p> <p>13:04 25 Q. Can you think of any other differences, Mr.</p>
<p style="text-align: center;">107</p> <p>1 BY MR. LAU:</p> <p>2 Q. If you have an understanding, Mr. Thompson, go 3 ahead and answer the question.</p> <p>4 MR. SHAW: No. I would like to know where in 13:01 5 the topics --</p> <p>6 MR. LAU: I could go through carefully all 32 7 topics, Mr. Shaw. That would be fine. However, I 8 want to move forward productively with the 9 deposition.</p> <p>13:01 10 If you are instructing him not to answer, 11 that's a position you can take. Even if 12 hypothetically this topic is outside the scope of 13 the 30(b)(6), it's a deposition. All that would 14 mean is that he would have a legitimate reason for 13:01 15 not preparing for this deposition. If he knows the 16 answer, he knows the answer. It's certainly 17 relevant to this litigation.</p> <p>18 MR. SHAW: Are you finished? I want to make 19 sure you put down everything you'd like to say so I 13:02 20 don't cut you off.</p> <p>21 MR. LAU: And what would you like to respond?</p> <p>22 MR. SHAW: Can you tell me where in the 23 30(b)(6) --</p> <p>24 MR. LAU: Let's go off the record. Let's not 13:02 25 waste time while we confer. Off the record.</p>	<p style="text-align: center;">109</p> <p>1 Thompson?</p> <p>2 A. No.</p> <p>3 Q. In your mind, did MARTA central billing 4 provide any benefits to the members that are no longer 13:05 5 available under Expert Warehouse?</p> <p>6 A. Yes.</p> <p>7 Q. What are those benefits?</p> <p>8 A. Better pricing, more focused -- more focused 9 merchandising.</p> <p>13:05 10 Q. When you say "better pricing," how does -- how 11 are prices determined under the Expert Warehouse system?</p> <p>12 A. I don't know that.</p> <p>13 Q. When you say that the MARTA central billing 14 system was more focused, what do you mean by that?</p> <p>13:06 15 A. The MARTA core model program helped focus 16 members to buy and to -- or to support more profitable 17 models that they can retail.</p> <p>18 Q. Going back to the MARTA central billing 19 system, was there any point during that process, during 13:07 20 the central billing process, that MARTA considered 21 itself to be the owner of the merchandise that the 22 members were buying?</p> <p>23 A. Well, MARTA was the owner of the merchandise 24 until the member paid for it. So that time period where 13:07 25 the -- until the product was paid for, MARTA was really</p>

<p style="text-align: right;">110</p> <p>1 on the hook for the product.</p> <p>2 Q. What would happen if a MARTA member defaulted</p> <p>3 on an order? Did that ever occur?</p> <p>4 A. It did occur, rarely.</p> <p>13:07 5 Q. And what would occur in those situations?</p> <p>6 A. Well, we would apply the letter of credit</p> <p>7 against the account. That would be the first step. And</p> <p>8 then we would strive to take the remaining product that</p> <p>9 the member would have owed us for and have that -- have</p> <p>13:08 10 a close member pick it up or buy it from that member</p> <p>11 that's in trouble financially.</p> <p>12 Q. Was there ever a situation where MARTA</p> <p>13 approved a purchase through central billing where the</p> <p>14 purchase exceeded the letter of credit for the</p> <p>13:08 15 particular member?</p> <p>16 A. I'm not aware of that happening, but it's</p> <p>17 possible that it could have.</p> <p>18 Q. But the policy was -- if I understand your</p> <p>19 testimony correctly, the policy was before MARTA would</p> <p>13:09 20 approve an order, before it would issue that J number,</p> <p>21 that it would assure itself that there was a sufficient</p> <p>22 letter of credit to cover the sale?</p> <p>23 A. Yes.</p> <p>24 Q. And that was a policy, right?</p> <p>13:09 25 A. Yes.</p>	<p style="text-align: right;">112</p> <p>1 A. Yes.</p> <p>2 Q. Would MARTA generally rely upon these types of</p> <p>3 documents during the course of its normal course of</p> <p>4 business?</p> <p>13:13 5 A. Yes.</p> <p>6 Q. Do you have any reason to believe why this</p> <p>7 document might not be authentic?</p> <p>8 A. No.</p> <p>9 Q. Can you turn to -- I guess it's the fourth</p> <p>13:13 10 page, Balance Sheets. Let's look under "Assets," under</p> <p>11 "Current Assets." Do you see the line item for</p> <p>12 "Merchandise Inventory"?</p> <p>13 A. Yes.</p> <p>14 Q. Does that reflect the situation we were</p> <p>13:13 15 discussing earlier when MARTA would be making these</p> <p>16 so-called opportunity buys and storing them in its</p> <p>17 inventory for a limited period of time?</p> <p>18 A. I would assume so.</p> <p>19 Q. By the way, I don't want you to guess to that.</p> <p>13:14 20 When you answer, I'm going to assume that you know the</p> <p>21 answer. And if you don't know the answer, please say, I</p> <p>22 do not know the answer. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. Let's look under "Liabilities." Under</p> <p>13:14 25 "Current Liabilities," there's a line item that reads,</p>
<p style="text-align: right;">111</p> <p>1 Q. And as you sit here today, you can't think of</p> <p>2 any time that MARTA might have deviated from that</p> <p>3 policy?</p> <p>4 A. No, not specifically.</p> <p>13:09 5 Q. Let me hand you a new document, Mr. Thompson.</p> <p>6 And I'd like the Court Reporter to mark this as Exhibit</p> <p>7 2484. This is a document that begins CRT-MARTA-0000089,</p> <p>8 MARTA Corporation of America, Inc., Audited Financial</p> <p>9 Statements & Additional Information, July 31, 2001 and</p> <p>13:11 10 2000.</p> <p>11 (Clarification by the Court Reporter.)</p> <p>12 MR. LAU: Let's mark this as 2485, please.</p> <p>13 (Exhibit 2485 was marked for Identification.)</p> <p>14 BY MR. LAU:</p> <p>13:11 15 Q. Why don't you please read this document? And</p> <p>16 once you have familiarized yourself with the document,</p> <p>17 let me know.</p> <p>18 A. Okay.</p> <p>19 Q. Mr. Thompson, do you recognize this document?</p> <p>13:12 20 A. Yes.</p> <p>21 Q. And what is this document?</p> <p>22 A. It's the MARTA Cooperative of America</p> <p>23 financial statements for 2001.</p> <p>24 Q. Would MARTA generate these types of documents</p> <p>13:12 25 during the normal course of its business?</p>	<p style="text-align: right;">113</p> <p>1 "Deferred marketing funds and manufacturing rebates</p> <p>2 payable."</p> <p>3 Do you see that line item?</p> <p>4 A. Yes.</p> <p>13:14 5 Q. What does that stand for?</p> <p>6 A. That would be the -- the bucket of funds that</p> <p>7 are used for merchandising within MARTA.</p> <p>8 Q. And where does that bucket of funds come from?</p> <p>9 A. That would be through the central bill</p> <p>13:14 10 program, the administrative expenses that were</p> <p>11 generated.</p> <p>12 Q. And when you say that, are you referring to</p> <p>13 the marketing funds or the manufacturing rebates or</p> <p>14 both?</p> <p>13:15 15 A. Everything -- when I use the phrase "bucket,"</p> <p>16 all of the sources of income went into that marketing</p> <p>17 fund. It has been referred to as the merch budget.</p> <p>18 That would be my belief of what that fund is.</p> <p>19 Q. What about manufacturing rebates payable?</p> <p>13:15 20 What does that refer to?</p> <p>21 A. That would be volume rebates. That would be</p> <p>22 payable.</p> <p>23 Q. Look at the next line down, "Deferred</p> <p>24 membership revenues." What does that reflect?</p> <p>13:16 25 A. I don't know.</p>

<p style="text-align: right;">114</p> <p>1 Q. Who would know the answer to that?</p> <p>2 A. Most likely Jeff Sokol. However, I want to</p> <p>3 qualify that. This was before his time. But I do not</p> <p>4 know the other people who would have been responsible</p> <p>13:16 5 for creating this, putting the information together. I</p> <p>6 do not know where they are.</p> <p>7 Q. Fair enough.</p> <p>8 Let's look at the next page. At the top we</p> <p>9 see a category of "Net Sales." And the next line item</p> <p>13:17 10 below that, "Less: Cost of Sales." The two are</p> <p>11 subtracted to get a gross margin of zero in 2000 and</p> <p>12 2001. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Why is it that the gross margin for both of</p> <p>13:17 15 these years is zero?</p> <p>16 A. That was the design.</p> <p>17 Q. And describe for me that design again.</p> <p>18 A. MARTA was a not-for-profit operation.</p> <p>19 Q. That existed for benefit of its members,</p> <p>13:17 20 correct?</p> <p>21 MR. SHAW: Object to the form.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. LAU:</p> <p>24 Q. Let's look at the next category: "Membership</p> <p>13:17 25 Revenues." "Dues," the first line item, are these the</p>	<p style="text-align: right;">116</p> <p>1 A. Right.</p> <p>2 Q. Looking at this, does this refresh your</p> <p>3 recollection that perhaps there was some sort of new fee</p> <p>4 charged to new members?</p> <p>13:19 5 MR. SHAW: Object to the form.</p> <p>6 THE WITNESS: Not that I know of.</p> <p>7 BY MR. LAU:</p> <p>8 Q. Okay. Who would know the answer to that, in</p> <p>9 terms of exactly what's contained in that line item?</p> <p>13:19 10 A. Likely, Jeff Sokol.</p> <p>11 Q. Turn to Page 7 of the document, please. Let's</p> <p>12 look under the first paragraph, "Organization." The</p> <p>13 first sentence reads, "Marta Cooperative of America,</p> <p>14 Inc. ('Marta' or the Company) is a nonprofit</p> <p>13:19 15 cooperative."</p> <p>16 Do you see that sentence?</p> <p>17 A. Yes.</p> <p>18 Q. Is that an accurate statement of MARTA?</p> <p>19 A. Yes.</p> <p>13:20 20 Q. See the next sentence that reads, "The Company</p> <p>21 was formed to provide its shareholders (members) with a</p> <p>22 means of combined group purchasing"? Do you see that</p> <p>23 sentence?</p> <p>24 A. Yes.</p> <p>13:20 25 Q. Is that sentence accurate?</p>
<p style="text-align: right;">115</p> <p>1 annual dues that we discussed earlier?</p> <p>2 A. Yes.</p> <p>3 Q. And below that, there's a line item that</p> <p>4 reads, "Administrative reimbursements." Do you see</p> <p>13:17 5 that?</p> <p>6 A. Yes.</p> <p>7 Q. What does that stand for?</p> <p>8 A. That would be the administrative or admin fees</p> <p>9 we talked about.</p> <p>13:18 10 Q. And then below that, there's another line item</p> <p>11 that reads, "New membership fees, net of expenses." Do</p> <p>12 you see that?</p> <p>13 A. I'm sorry. Which line?</p> <p>14 Q. Below "Administrative reimbursements," the</p> <p>13:18 15 next line item reads --</p> <p>16 A. Oh, okay. Yeah.</p> <p>17 Q. -- "New membership fees, net of expenses."</p> <p>18 What does that stand for?</p> <p>19 A. I think it stands for what it says, new</p> <p>13:18 20 membership fees.</p> <p>21 Q. And I ask this because I thought you said</p> <p>22 earlier that when -- maybe I misheard you, but I</p> <p>23 thought you said that when a member joined MARTA, there</p> <p>24 was no -- like, I think I called it an initiation fee</p> <p>13:18 25 or --</p>	<p style="text-align: right;">117</p> <p>1 A. Yes.</p> <p>2 Q. Take a look at the next sentence: "All</p> <p>3 revenues in excess of expenses and income taxes, if any,</p> <p>4 of the Company are distributed to its members in</p> <p>13:20 5 proportion to annual net sales of merchandise sold to</p> <p>6 members."</p> <p>7 Is that sentence accurate?</p> <p>8 A. Yes.</p> <p>9 Q. But as you testified earlier, you can't recall</p> <p>13:20 10 a situation when there was actually a distribution; is</p> <p>11 that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 Finally, the final sentence reads, "All sales</p> <p>13:20 15 of the Company are to the members and are intended for</p> <p>16 resale by the members."</p> <p>17 Do you see that sentence?</p> <p>18 A. Yes.</p> <p>19 Q. Is that sentence accurate?</p> <p>13:20 20 A. Yes.</p> <p>21 Q. Okay. Let's skip down a few different</p> <p>22 categories to the category that reads "Administrative</p> <p>23 Fees." The first sentence reads, "Members are charged</p> <p>24 an administrative fee of .08% of total sales billed</p> <p>13:21 25 through MARTA."</p>

<p style="text-align: right;">118</p> <p>1 Do you see that sentence?</p> <p>2 A. Yes.</p> <p>3 Q. When I look at this sentence, it seems to be a</p> <p>4 little inconsistent with the two percent fee that you</p> <p>13:21 5 discussed earlier, or am I misunderstanding how the</p> <p>6 system works?</p> <p>7 MR. SHAW: Object to the form.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. LAU:</p> <p>13:21 10 Q. Do you know what this administrative fee of</p> <p>11 .08 percent, do you know what that reflects?</p> <p>12 A. No.</p> <p>13 Q. Who would know the answer to that?</p> <p>14 A. Most likely, Jeff Sokol.</p> <p>13:21 15 Q. Would Aimee Fields know the answer to that</p> <p>16 question?</p> <p>17 A. I don't know, but I doubt it.</p> <p>18 Q. Turn to Page 10, please. Look at Note 9:</p> <p>19 "Approved Vendor Sales - Unaudited." Do you see that</p> <p>13:22 20 paragraph?</p> <p>21 A. Yes.</p> <p>22 Q. The first sentence reads, "Certain members</p> <p>23 purchase directly from the Company's vendors, and the</p> <p>24 activity is not reported in the Company's financial</p> <p>13:22 25 statements." Do you see that?</p>	<p style="text-align: right;">120</p> <p>1 Q. Yes, you did. And you can tell by looking at</p> <p>2 the Bates number on the lower right-hand corner.</p> <p>3 A. I'm just saying, it's such small type. When</p> <p>4 you say "familiarize yourself" -- I'm not trying to make</p> <p>13:24 5 light of this -- it's just a touch hard.</p> <p>6 Q. I had the same reaction when I reviewed the</p> <p>7 document myself.</p> <p>8 A. Yeah. I'm sure it looks better on a computer</p> <p>9 or a spreadsheet, but it's a little more difficult to</p> <p>13:25 10 see. Okay. That's all.</p> <p>11 Q. Okay. Mr. Thompson, do you recognize this</p> <p>12 document?</p> <p>13 A. Yes.</p> <p>14 Q. And what is this document?</p> <p>13:25 15 A. It appears to be a financial analysis on MARTA</p> <p>16 that covers a period of time -- and I think I'm reading</p> <p>17 this right -- from 1991 to 2005.</p> <p>18 Q. Do you recall seeing documents like this</p> <p>19 during your employment at MARTA?</p> <p>13:26 20 A. No.</p> <p>21 Q. Do you have any reason to believe that this</p> <p>22 document is not authentic?</p> <p>23 A. No.</p> <p>24 Q. Take a look at the top of the document. And,</p> <p>13:26 25 again, we have three line items: Net sales, net cost of</p>
<p style="text-align: right;">119</p> <p>1 A. Yes.</p> <p>2 Q. Is that an accurate statement of what occurred</p> <p>3 at MARTA?</p> <p>4 A. Yes.</p> <p>13:22 5 Q. And this would be the situation where if I</p> <p>6 understood your testimony correctly, you said that these</p> <p>7 are the situations where the member is working with a</p> <p>8 vendor and, really, no involvement of MARTA whatsoever;</p> <p>9 is that correct?</p> <p>13:23 10 A. Yes.</p> <p>11 Q. And whatever deal they are striking between</p> <p>12 the vendor and the member, it has nothing to do with the</p> <p>13 prices negotiated by MARTA; is that correct?</p> <p>14 A. Correct.</p> <p>13:23 15 Q. You can put that document down. Thanks.</p> <p>16 I'm going to hand the Court Reporter a new</p> <p>17 document to be marked. And we're now at Exhibit 2486,</p> <p>18 CRT-MARTA-0019191. It's a document entitled "MARTA</p> <p>19 Cooperative of America, Inc., Financial Analysis</p> <p>13:24 20 Report."</p> <p>21 (Exhibit 2486 was marked for Identification.)</p> <p>22 BY MR. LAU:</p> <p>23 Q. Please take a moment to familiarize yourself</p> <p>24 with this document and let me know when you're ready.</p> <p>13:24 25 A. Did we send this to you?</p>	<p style="text-align: right;">121</p> <p>1 sales, equals gross margin. Do you see that?</p> <p>2 MR. SHAW: You said net sales?</p> <p>3 MR. LAU: Net sales --</p> <p>4 THE WITNESS: Is it on the top?</p> <p>13:26 5 THE WITNESS: It looks like cost of sales.</p> <p>6 BY MR. LAU:</p> <p>7 Q. Oh, I see. I see what the problem is. I see</p> <p>8 it now. It looks like it's cut off at the top.</p> <p>9 Do you see the -- let's focus on the gross</p> <p>13:27 10 margin, then.</p> <p>11 A. All right.</p> <p>12 Q. And that is -- there are no numbers for the</p> <p>13 gross number from 1991 to 2005; is that correct?</p> <p>14 A. Yes.</p> <p>13:27 15 Q. Okay. And this is consistent with your</p> <p>16 understanding that MARTA, as a not for profit, wasn't</p> <p>17 supposed to generate gross margins in any given year,</p> <p>18 correct?</p> <p>19 MR. SHAW: Object to the form.</p> <p>13:27 20 THE WITNESS: MARTA did not -- what this would</p> <p>21 reflect to me is MARTA did not show a profit during</p> <p>22 those years.</p> <p>23 BY MR. LAU:</p> <p>24 Q. And for -- putting this document aside, think</p> <p>13:28 25 about it from your own recollection in terms of, you</p>

<p style="text-align: center;">122</p> <p>1 know, your experience at MARTA, as well as, you know, 2 the preparation you have done to prepare for today's 3 deposition. Have you seen any indication that at any 4 point in time that MARTA, you know, generated a profit? 13:28 5 MR. SHAW: Object to the form. 6 THE WITNESS: No. 7 BY MR. LAU: 8 Q. Thank you. You can put that document aside. 9 I'm going to hand you a different document. 13:29 10 And if I'm counting correctly, we're at 2487. And this 11 is a document CRT-MARTA-0005421. It is a document 12 generated by Toshiba. 13 If I can hand this to the Court Reporter to 14 get this marked, please. 13:29 15 (Exhibit 2487 was marked for Identification.) 16 BY MR. LAU: 17 Q. Please take a moment to review this document. 18 And once you have done so, please let me know. 19 A. Okay. 13:30 20 Q. Mr. Thompson, do you recognize this document? 21 A. Yes. 22 Q. And what is this document? 23 A. It looks like a credit that was applied to 24 some units that were shipped to Jetson's. 13:30 25 Q. Would MARTA obtain these types of documents in</p>	<p style="text-align: center;">124</p> <p>1 then you can say objection, mischaracterized the 2 document. 3 MR. SHAW: No, no. What I'm saying is, he 4 looked over at the screen and you're suggesting 13:32 5 that he was looking for me to give him advice. 6 MR. LAU: That's what it appeared to me. I 7 didn't know what he was looking at. 8 MR. SHAW: He looked at the screen. So don't 9 editorialize. 13:32 10 MR. LAU: That's fine, Mr. Shaw. 11 MR. SHAW: If you have a question, ask your 12 question. 13 MR. LAU: A good-faith mistake. I understand. 14 THE WITNESS: All right. Give me that again 13:33 15 so I know where you're coming from. 16 BY MR. LAU: 17 Q. Okay. Is this an example of a vendor sending 18 an invoice to MARTA for merchandise that a member had 19 ordered through central billing? 13:33 20 A. No. 21 Q. What is it, then? 22 A. It appears to be a credit. 23 Q. Okay. And under what circumstances would 24 credits be issued? 13:33 25 A. It could have been damaged. It could have</p>
<p style="text-align: center;">123</p> <p>1 the normal course of its business? 2 A. Did you say retain? 3 Q. Obtain. Obtain. 4 A. I would assume so, yes. 13:30 5 Q. Okay. And would MARTA rely on these documents 6 for the purposes of conducting its business? 7 A. Yes. 8 Q. Any reason to believe that this document is 9 not authentic? 13:31 10 A. No. 11 Q. So this document -- this goes back to our 12 discussion of central billing, where -- is this an 13 example of a vendor billing MARTA for a shipment placed 14 through MARTA's central billing? 13:32 15 Mr. Thompson, you can't look to your attorney 16 for guidance. 17 A. Did you ask a question? 18 Q. Yeah. Is this an example of a vendor issuing 19 an invoice to MARTA for a sale that had been approved 13:32 20 through central billing? 21 MR. SHAW: Hang on one second. Could you also 22 not editorialize after questions and things? Okay? 23 MR. LAU: I don't understand. 24 MR. SHAW: You don't understand? 13:32 25 MR. LAU: If I mischaracterize the document,</p>	<p style="text-align: center;">125</p> <p>1 been the wrong model shipped. The receiver, in this 2 case, Jetson's, there was a reason why the units were 3 returned. I can't really tell from this document why. 4 Q. Fair enough. Let me ask the question a 13:33 5 different way. 6 When vendors would -- after MARTA would issue 7 a J number to a vendor and the vendor would ship the 8 merchandise to the member, the vendor would invoice 9 MARTA, correct? 13:34 10 A. Yes. 11 Q. How would that occur? Would that occur 12 electronically? Would that occur on paper? 13 A. It occurred electronically. 14 Q. Okay. 13:34 15 A. I believe paper copies were supplied, and that 16 changed later on in the process. 17 Q. And when the vendor would issue the invoice 18 and we think it's electronically, that would be -- that 19 invoice would go to MARTA, correct? 13:35 20 A. Right. 21 Q. Then MARTA would send an invoice to the member 22 asking for payment, correct? 23 A. Yes. 24 Q. Okay. Would the price invoiced by the vendor 13:35 25 to MARTA, would that be the same price on the MARTA</p>

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1 invoice to the member?
 2 A. No.
 3 Q. And why would it not be?
 4 A. Because you've got the roundup factor that --
 13:35 5 where the price is, is rounded up in the invoicing to
 6 the member.
 7 Q. Any other reason why the price might not be
 8 the same?
 9 A. No.
 13:36 10 Q. Okay. So it would be fair to say that the
 11 only difference between the price charged by the vendor
 12 to MARTA, the price charged by MARTA to the member, the
 13 only difference between those two prices would be this
 14 roundup factor that we've discussed?
 13:36 15 A. Yeah. In the roundup, the admin fee was also
 16 in that roundup.
 17 Q. The admin fee -- so the roundup includes the
 18 admin fee.
 19 A. Right.
 13:37 20 Q. Okay. How would MARTA invoice its members?
 21 Would that occur on paper or would that occur
 22 electronically?
 23 A. It started on paper and ended up electronic,
 24 and that would depend upon the years we're talking about
 13:37 25 within the scope.

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1 Q. If a member decided to use the services of a
 2 financial company, who would MARTA invoice? Invoice --
 3 would MARTA invoice the member or would MARTA invoice
 4 the member's finance company?
 13:37 5 A. Well, MARTA would have invoiced the -- would
 6 have invoiced the finance company.
 7 Q. In your recollection, how often would members
 8 cancel purchases? Is that a rare occurrence? Did it
 9 occur regularly?
 13:38 10 A. It would have been a rare occurrence.
 11 Q. And you discussed before the lunch break that
 12 if it occurred -- if a shipment was cancelled soon after
 13 placing an order, that that communication might go
 14 directly from the member to the vendor, right?
 13:38 15 A. Right.
 16 Q. But if there was a delay of several days, then
 17 the member might contact MARTA to cancel the order.
 18 A. Most likely, yes.
 19 Q. And that would just be for logistical reasons
 13:39 20 because, at that point in time, MARTA would have all the
 21 paperwork associated with that sale; is that correct?
 22 A. Right. And they wanted to make sure that they
 23 didn't tie up the member's credit line because of orders
 24 that might have been in place.
 13:39 25 Q. I understand.

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1 When MARTA's members were purchasing CRT
 2 televisions, did MARTA have any understanding as to
 3 which company produced not the television but which
 4 company produced the cathode ray tube, the CRT inside
 13:39 5 the television?
 6 A. No.
 7 Q. Was the identity of the company that produced
 8 the CRT in the television, was that used by MARTA for
 9 any of its purchasing decisions?
 13:40 10 A. No.
 11 Q. Did anyone at MARTA have any reason to care
 12 about the name of the company that produced the CRT in
 13 the television?
 14 A. No.
 13:40 15 Q. Did the members of MARTA ever communicate to
 16 MARTA that it was important, from their perspective, the
 17 name of the company that produced the tube inside the
 18 television?
 19 A. No.
 13:40 20 Q. As we sit here today, Mr. Thompson, would
 21 there be any way for MARTA to go back and figure out --
 22 of all the CRT televisions purchased by its members,
 23 would there be any way for MARTA to determine, now, the
 24 name of the company that produced the CRT in the
 13:41 25 television?

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1 MR. DIEL: Objection. Form. Speculation.
 2 THE WITNESS: No.
 3 BY MR. LAU:
 4 Q. Do you have any understanding as to -- based
 13:41 5 on the price of any given CRT television, do you have
 6 any understanding as to what portion of that price is
 7 attributable to the CRT that's inside the television?
 8 A. No.
 9 Q. Now, this morning, we discussed the length of
 13:42 10 MARTA's programs with its vendors, and we also discussed
 11 the fact that the prices pursuant to such programs, they
 12 were renegotiated from time to time. Do you recall that
 13 discussion, Mr. Thompson?
 14 A. Yes.
 13:42 15 Q. Did the negotiated prices for CRT televisions
 16 vary according to the time of year?
 17 A. Yes.
 18 Q. How so?
 19 A. The vendors typically had annual line changes.
 13:43 20 And as you were coming toward the end of a model life of
 21 a series, many times you would see either a discount to
 22 help sell the remaining product, or if you -- if they
 23 didn't have any -- that much product to sell, then you
 24 wouldn't see a discount.
 13:43 25 Q. Any other reasons why price might vary based

<p style="text-align: right;">130</p> <p>1 on the time of year?</p> <p>2 A. There was some seasonality in -- around the</p> <p>3 holidays. And it has since turned into a bigger time,</p> <p>4 which is Super Bowl -- has become a bigger promotional</p> <p>13:43 5 period than in times past. But during this relevant</p> <p>6 period, it was just starting to get traction as a</p> <p>7 promotional period.</p> <p>8 Q. And how would seasonality affect the prices</p> <p>9 during the relevant time period?</p> <p>13:44 10 A. During the -- those periods that I mentioned,</p> <p>11 you would see more advertising and promotional activity</p> <p>12 in the marketplace. And, as a result, to compete in the</p> <p>13 market, you would likely see some pricing moves. In</p> <p>14 many cases, it would be price decreases.</p> <p>13:44 15 Q. When we talk about these periods of time,</p> <p>16 we're talking about when? Times around -- I think you</p> <p>17 mentioned the Super Bowl?</p> <p>18 A. Yeah. Super Bowl.</p> <p>19 Q. Any other times of the year?</p> <p>13:44 20 A. Black Friday would have been another one. And</p> <p>21 then end of year. And their model years generally ended</p> <p>22 in March or April.</p> <p>23 Q. And during these times of the year -- Super</p> <p>24 Bowl, Black Friday, end of the year -- what would happen</p> <p>13:45 25 to the price, in your experience?</p>	<p style="text-align: right;">132</p> <p>1 into account the roundup, which includes the</p> <p>2 administrative fee?</p> <p>3 MR. SHAW: Object to the form.</p> <p>4 MR. DIEL: Objection. Lack of foundation.</p> <p>13:47 5 THE WITNESS: The same formula would apply.</p> <p>6 BY MR. LAU:</p> <p>7 Q. Okay. And since someone is complaining about</p> <p>8 foundation, let's take a step back.</p> <p>9 You -- in your time as executive director of</p> <p>13:47 10 MARTA, you've seen instances where the price of CRT</p> <p>11 televisions increased; is that correct? Or is it only a</p> <p>12 case of prices decreasing?</p> <p>13 A. I came on the scene --</p> <p>14 MR. DIEL: Form.</p> <p>13:48 15 THE WITNESS: Was there a comment before I</p> <p>16 answer?</p> <p>17 MR. DIEL: I just said, objection. Form.</p> <p>18 BY MR. LAU:</p> <p>19 Q. You can just ignore all of these objections.</p> <p>13:48 20 A. I came on the scene at the very end of the CRT</p> <p>21 life cycle. So I saw very limited pricing. So when</p> <p>22 you're asking me for what I saw, that's what I saw.</p> <p>23 Most all of it was a reduction in price.</p> <p>24 Q. For the reduction in price, would it always be</p> <p>13:48 25 the case that the reduced price from the vendor to</p>
<p style="text-align: right;">131</p> <p>1 A. Generally, it would be reduced.</p> <p>2 Q. We talked about the relationship between the</p> <p>3 price paid from the vendor to MARTA and then a separate</p> <p>4 price from MARTA to the member. And if I understand</p> <p>13:46 5 your testimony correctly, the only difference between</p> <p>6 those two prices would be the roundup, which includes</p> <p>7 the administrative fee.</p> <p>8 A. Yes.</p> <p>9 Q. Correct?</p> <p>13:46 10 A. Yes.</p> <p>11 Q. So that if -- if the price from the vendor to</p> <p>12 MARTA increased, say, from -- let's use an example --</p> <p>13 from 100 to 110, then the price that MARTA charged the</p> <p>14 member would also go from 100 to 110, adjusting for --</p> <p>13:46 15 taking into account the roundup which includes the</p> <p>16 administrative fee, correct?</p> <p>17 MR. SHAW: Object to the form.</p> <p>18 THE WITNESS: Yeah. We would strive to do</p> <p>19 that. When prices would change, we'd follow that</p> <p>13:47 20 formula.</p> <p>21 BY MR. LAU:</p> <p>22 Q. Let's take another example. Let's say the</p> <p>23 price -- it was 100 and now it's dropped to 90. So the</p> <p>24 vendor is now charging \$90 to MARTA. Would that price</p> <p>13:47 25 also be charged, \$90, from MARTA to the member, taking</p>	<p style="text-align: right;">133</p> <p>1 MARTA, whatever the reduction would be, that would be</p> <p>2 the same reduction that MARTA would provide to the</p> <p>3 member, taking into account the roundup, which includes</p> <p>4 the administrative fee?</p> <p>13:48 5 MR. SHAW: Object to the form.</p> <p>6 MR. DIEL: Objection. Lack of foundation.</p> <p>7 THE WITNESS: It would follow the same</p> <p>8 formula.</p> <p>9 BY MR. LAU:</p> <p>13:49 10 Q. You're aware of no exceptions to this formula,</p> <p>11 correct?</p> <p>12 MR. SHAW: Object to the form.</p> <p>13 MR. DIEL: Same objection.</p> <p>14 THE WITNESS: No.</p> <p>13:49 15 BY MR. LAU:</p> <p>16 Q. Thank you.</p> <p>17 Mr. Thompson, are you familiar with the term</p> <p>18 "focal pricing"?</p> <p>19 A. Did you say local?</p> <p>13:49 20 Q. Focal, with an F.</p> <p>21 A. Focal? Not as a general rule.</p> <p>22 Q. How about the term "price point"? Are you</p> <p>23 familiar with that term?</p> <p>24 A. Price point, yes.</p> <p>13:49 25 Q. And what's your understanding of that term?</p>

<p style="text-align: right;">134</p> <p>1 A. Perhaps I could give you an example to 2 illustrate it. 3 Q. Yes, please. 4 A. And it might be the best answer. 13:50 5 \$299 might be a price point that is -- is hot 6 in the market for selling a product. That would be a 7 price point. \$309 would not be considered a price 8 point. 9 Q. When negotiating with vendors, would MARTA 13:50 10 attempt to negotiate prices around price points? 11 A. MARTA would strive to negotiate in product 12 categories. The price points varied widely from what 13 our members were able to realize at retail. So you 14 would try and get something that would get down to a 13:51 15 certain cost level, and then members would apply their 16 markup and such. 17 Q. Let me rephrase the question. 18 In negotiating prices with vendors, would 19 MARTA take into consideration the price points that were 13:51 20 important from its members' perspective; that is to say, 21 the retail prices at which the members would ultimately 22 sell? 23 A. MARTA would take into consideration what was 24 important price points in the marketplace because you 13:51 25 had to have product that would hit those price points.</p>	<p style="text-align: right;">136</p> <p>1 50-something inch. 2 Q. In your experience, did MARTA's vendors sell a 3 variety of screen sizes? 4 A. Yes. 13:53 5 Q. If for a specific vendor, that vendor decided 6 to increase the cost of a smaller screen-size TV, would 7 that necessarily impact the price that the vendor was 8 willing to charge for larger screen-size TVs? 9 MR. DIEL: Objection. Foundation. 13:54 10 THE WITNESS: It might have, and it might not 11 have. 12 BY MR. LAU: 13 Q. When you say it might not have, why do you say 14 that? 13:54 15 A. You know, I think your question was, if you 16 increase the size -- the price on a 13-inch TV, is it 17 going to impact the price on a 27-inch TV? 18 Q. Correct. 19 A. Okay. That's why I say maybe; maybe not. It 13:54 20 could have been an across-the-board price increase -- 21 meaning, two percent on all models -- or it could have 22 been a price increase that was selective on model for 23 model. 24 Q. So sitting here today, can you think of 13:54 25 instances where vendors instituted price increases just</p>
<p style="text-align: right;">135</p> <p>1 Otherwise, your members wouldn't buy them. 2 Q. So is the answer, yes, MARTA would take its 3 members' price into consideration? 4 MR. SHAW: Object to the form. This is the 13:51 5 kind of editorializing. You can ask a question and 6 get an answer. His answer was not "so the answer 7 is yes." 8 BY MR. LAU: 9 Q. Go ahead and answer the question, please. 13:51 10 A. Question again. 11 Q. When negotiating prices with vendors, would 12 MARTA take into consideration the price points that its 13 members would believe important when the members would 14 sell televisions at retail? 13:52 15 A. Yes. 16 Q. Thank you. 17 What size televisions, during the relevant 18 time period, would MARTA include in its vendor programs? 19 A. Virtually any size that the vendors were 13:53 20 producing. 21 Q. Do any specific screen sizes come to mind 22 after all these years? 23 A. Well, it could have been a 13-inch TV. It 24 could have been a 27-inch. In the end, they had the 13:53 25 wide screen, big-screen TVs. I think they were</p>	<p style="text-align: right;">137</p> <p>1 for specific screen sizes, not across the board? 2 A. I can't think of the specifics of it, but I'm 3 sure that's happened. 4 Q. Okay. Typically, when a member placed an 13:55 5 order with a vendor, how long after placing that order 6 would the member receive shipment of whatever the member 7 was buying? 8 A. Within days, would be the normal practice. 9 There were occasions where the vendor might have been 13:55 10 out of stock and it was going to take a little more time 11 and the product would be back ordered. 12 Q. When prices of, say, for example, CRTs changed 13 pursuant to a specific vendor program, would MARTA 14 notify its membership of that price change? 13:56 15 A. Yes. 16 Q. How would it do so? 17 A. MARTA would typically send out a bulletin to 18 its members, explaining that there was a price change. 19 And as part of the bulletin, the new price sheets would 13:57 20 be included. 21 Q. How often would MARTA send out bulletins? 22 A. Pricing bulletins or bulletins? 23 Q. How about pricing bulletins. 24 A. Pricing bulletins would be sent out as prices 13:57 25 changed.</p>

<p style="text-align: right;">138</p> <p>1 Q. Other than pricing bulletins, what type of 2 bulletins would MARTA send out? 3 A. A variety of communication. Could have been 4 things that were noted going on within the industry, 13:57 5 things that might be going on within MARTA. For the 6 most part, things that would be of interest to the 7 members. 8 Q. Mr. Thompson, are you familiar with the term 9 "marketing funds"? 13:58 10 A. Yes. 11 Q. And what does that term mean to you? 12 A. Marketing funds would be generally funds that 13 were provided over and outside the normal program 14 negotiation. 13:58 15 Q. And would the amount of the marketing funds be 16 negotiated between MARTA and the vendor? 17 A. Yes. 18 Q. What would -- what would MARTA do with these 19 marketing funds? 13:59 20 A. Generally speaking, it would go into the merch 21 budget, and that would be translated into the core model 22 program. 23 Q. So that would be the only purpose of the 24 marketing funds, to go in the merch budget to go into 13:59 25 the core program?</p>	<p style="text-align: right;">140</p> <p>1 A. No. 2 Q. Would MARTA rely on these types of documents 3 in the normal course of its business? 4 A. Yes. 14:02 5 Q. And is there any reason to believe that this 6 document is not authentic? 7 A. No. 8 Q. Let's look at the specific categories. The 9 first category, 24100, special promotions. Do you 14:02 10 recall these types of special promotions being provided 11 for at MARTA? 12 A. Yes. 13 Q. Okay. What's a Show Buck? 14 A. It's part of the promotional incentives, I 14:03 15 guess you would call it, for members. As I mentioned, 16 MARTA held three shows each year. And during those 17 shows, there would be specials. And to qualify for Show 18 Bucks, which would be the -- these dollars, you had to 19 attend the show. 14:03 20 Q. Okay. Would these be -- what could the 21 members do with Show Bucks? 22 A. Well, we applied the Show Bucks as -- they 23 earned it -- I'm sorry. The members earned the Show 24 Bucks based on their purchases. Now, they then got the 14:03 25 money returned to them.</p>
<p style="text-align: right;">139</p> <p>1 A. Not necessarily the only function. It could 2 have been to assist with the shows that MARTA held and 3 sponsored. 4 Q. If a vendor provided marketing funds and it 14:00 5 was used by MARTA to promote core models, would it be 6 the case that those marketing funds would be used to 7 promote the vendor's models or models generally? 8 A. The vendor's models. 9 BY MR. LAU: 14:00 10 Q. I'll hand out a new exhibit which we're going 11 to mark as 2488. And this is CRT-MARTA-0006830. And 12 this is a one-page document, MARTA Funds of America, 13 Inc., Marketing Funds Classifications. 14 (Exhibit 2488 was marked for Identification.) 14:01 15 BY MR. LAU: 16 Q. Please review this document, Mr. Thompson, and 17 let me know when you've done so. 18 A. Okay. 19 Q. Mr. Thompson, do you recognize this document? 14:01 20 A. Yes. 21 Q. And what is this document? 22 A. It's the marketing funds clarification 23 classification. 24 Q. Do you recall seeing documents like this at 14:02 25 MARTA?</p>	<p style="text-align: right;">141</p> <p>1 Q. So this would be in the nature of like a 2 rebate, or -- 3 A. Well, it would be a check back to them for 4 however many they might -- products they might have 14:04 5 purchased based on the Show Bucks schedule during the 6 show. 7 Q. And the Show Bucks, because they were part of 8 these marketing funds, these would be funds provided by 9 the vendors; is that correct? 14:04 10 A. Yes. 11 Q. What about rebate promotions? What are those? 12 A. MARTA did have, from time to time, consumer 13 rebate programs that they would have for products that 14 you might have purchased. Once the retailer then turns 14:04 15 around and sells it, the consumer can then claim their 16 rebate back through MARTA. MARTA had a fulfillment 17 house that did it, but MARTA's the one that funded it. 18 Q. With funds that were ultimately provided by 19 the vendors; is that correct? 14:05 20 A. Yes. 21 Q. Yes. 22 What are finance promotions? 23 A. Similar thought process. This would have been 24 with a wholesale -- or a retail financing company, where 14:05 25 if a consumer wanted to finance the product and they</p>

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1 used the member's retail financing company, the cost
 2 of -- for that subsidized financing offer to the
 3 consumer was provided for by MARTA.
 4 Q. What about funds held for trips and overhead?
 14:05 5 What does that mean?
 6 A. We had some -- if I say -- trips that we went
 7 to the vendors, and that was to pay for the folks that
 8 attended those trips, paid for the expenses. And then
 9 the overhead is the overhead of MARTA.
 14:06 10 Q. What was the purpose of these trips to
 11 vendors?
 12 A. Well, it was relationship building, but it
 13 also was a way to have our members connect to -- a
 14 certain way with some of the executives from the various
 14:06 15 vendors that we did business with.
 16 Q. See where it says, "funds to reimburse for
 17 CPG," under "Special promotions"?
 18 A. Yes.
 19 Q. What does that mean?
 14:06 20 A. I don't know for sure. I think it is the
 21 rebate house. That might be an acronym for the rebate
 22 house, but I don't know that for sure.
 23 Q. How about the next entry down, "Billed
 24 manufacturer funds to offset pricing holdback." Do you
 14:07 25 see that?

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1 A. Yes.
 2 Q. What does that mean?
 3 A. I think it is more of a catch-all for the
 4 billing problems that we had and they've got them
 14:07 5 identified there.
 6 Q. What about the next line item down:
 7 "Returns/Damaged/Short Shipment MARTA Funds
 8 reimbursement"? What does that stand for?
 9 A. Again, it's -- there was a damage policy in
 14:07 10 our working agreement with all the vendors, but
 11 sometimes that damage policy didn't cover all of the
 12 situations that came up, and you needed some way to make
 13 the problem disappear.
 14 Q. How about the final entry, "Manufacturer funds
 14:08 15 to be distributed to dealers - pass through account."
 16 What does that refer to?
 17 A. Well, if there would be anything left over at
 18 the end of the day, that would be considered a profit
 19 that MARTA would make, so -- and as we've established
 14:08 20 earlier, there wasn't a profit.
 21 Q. All right. You can put that document aside.
 22 I'm going to hand a new exhibit to the Court
 23 Reporter. This is a document CRT-MARTA-0019208. It
 24 goes on for several pages. It's entitled "MARTA
 14:09 25 Co-Marketing Program."

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1 (Exhibit 2489 was marked for Identification.)
 2 BY MR. LAU:
 3 Q. Please review this document. And once you've
 4 had a chance to do so, let me know.
 14:10 5 A. Okay.
 6 Q. Mr. Thompson, do you recognize this document?
 7 A. Yes.
 8 Q. What is this document?
 9 A. Co-marketing program that MARTA put in place
 14:11 10 to assist the members in marketing the product that they
 11 had been purchasing.
 12 Q. Would MARTA generate these types of documents
 13 in the normal course of its business?
 14 A. This was a, yeah, a program, yeah, that they
 14:11 15 put out. It's co-marketing.
 16 Q. Would MARTA rely on documents like this in the
 17 normal course of its business?
 18 A. Yes.
 19 Q. Any reason to believe that this document is
 14:11 20 not authentic?
 21 A. No.
 22 Q. What is a co-marketing program?
 23 A. It is a program where funds are provided to
 24 the member, and the member is expected to put some of
 14:11 25 their funds together with it. And the combination of

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1 the two, they can develop a marketing program that would
 2 be stronger than the member would be able to generate on
 3 their own.
 4 Q. So the funds provided to the member, these
 14:12 5 were funds provided by the vendor to the member,
 6 correct?
 7 A. It was provided from the vendor to MARTA, and
 8 then MARTA decided how to -- how to apply the funds to
 9 the members.
 14:12 10 Q. Oh. So the vendor would provide funds to
 11 MARTA, with the expectation that MARTA would allocate it
 12 to specific members for purposes of developing these
 13 co-marketing programs; is that correct?
 14 A. Yes.
 14:12 15 Q. Okay. Was there any set formula established
 16 in terms of how much members would need to contribute,
 17 in terms of co-marketing funds?
 18 A. Generally, the members were expected to
 19 develop a plan and put the request in with MARTA to do
 14:13 20 it. And then MARTA would evaluate and approve the plan,
 21 put it in place and then administer it.
 22 Q. So who would administer the program, the
 23 member or MARTA?
 24 A. MARTA.
 14:13 25 Q. MARTA would. Okay.

<p style="text-align: right;">146</p> <p>1 And what types of activities would -- could be 2 used with these co-marketing funds? 3 A. Advertising, consumer rebates, direct mail 4 flyers, radio, TV. 14:14 5 Q. So the purpose of this co-marketing program 6 was to promote the member sales of specific vendor 7 merchandise; is that correct? 8 A. Yes. 9 Q. You talked earlier, Mr. Thompson, about a 14:14 10 merchandise budget. Do you recall that? 11 A. Yes. 12 Q. Does the phrase "merchandise fund" mean 13 anything different to you? 14 A. No. 14:15 15 MR. LAU: I'm going to hand a new -- before I 16 hand this over, could I get a check from the 17 videographer in terms of how much longer we have on 18 this particular tape? 19 THE VIDEOGRAPHER: You've got eight minutes. 14:15 20 MR. LAU: Maybe now would be a good time to 21 take a break. You can switch the tape, and then we 22 can come back and start anew. Make sense? 23 THE VIDEOGRAPHER: The time is 2:14. This is 24 the end of Media Unit 3. We're now off the record. 14:30 25 (Break taken from 2:14 p.m. to 2:29 p.m.)</p>	<p style="text-align: right;">148</p> <p>1 documents the normal course of its business? 2 A. Yes. 3 Q. Would MARTA rely on these types of documents 4 in the normal course of its business? 14:33 5 A. Yes. 6 Q. Do you have any reason to believe that this 7 document is not authentic? 8 A. No. 9 Q. You described this as a show program. And 14:33 10 what does that mean? 11 A. We had -- and I don't know the date of the 12 show, but it would have been somewhere between August 13 9th and October 27th. We had a show. During that 14 program, the pricing and the -- and such that you see in 14:34 15 here would apply to the Thomson purchase product during 16 that time period. 17 Q. Just for this specific time period, right? 18 A. Yes. 19 Q. How many show programs or how did show program 14:34 20 prices differ from the normal program prices? 21 A. Generally, they were lower. 22 Q. Can you turn to the first, second, third, 23 fourth page? And that's a -- it appears to be a 24 printout from an Excel spreadsheet or some sort of 14:34 25 database. Does that sound about right to you?</p>
<p style="text-align: right;">147</p> <p>1 THE VIDEOGRAPHER: The time is 2:29. This 2 begins Media Unit 4. We're back on record. 3 BY MR. LAU: 4 Q. I'm going to hand another document to the 14:30 5 Court Reporter that I would like to be marked as Exhibit 6 2490. This is a document Bates No. CRT-MARTA-0011197. 7 It goes on for about 19 pages. And it's entitled -- it 8 doesn't have a title. It's a series of spreadsheets and 9 tables entitled "Thomson." 14:30 10 (Exhibit 2490 was marked for Identification.) 11 BY MR. LAU: 12 Q. Mr. Thompson, I'd like you to review this 13 document. And when you've had a chance to do so, please 14 let me know. 14:32 15 A. Okay. 16 Q. Mr. Thompson, do you recognize this document? 17 A. Yes. 18 Q. What is this document? 19 A. It appears to be the Thomson show program 14:33 20 for -- it would have been our show that was in the fall 21 of 2002. 22 Q. Is this a document that would have been 23 generated by MARTA or by Thomson? 24 A. MARTA. 14:33 25 Q. Okay. And did MARTA generate these types of</p>	<p style="text-align: right;">149</p> <p>1 A. Yes. 2 Q. Okay. Do you see on the top it says, "Terms 3 are 3% from Aug 8th to Oct 27th." 4 Do you see that sentence? 14:35 5 A. Yes. 6 Q. And what does that refer to? 7 A. The terms would have a three-percent discount 8 during that period. 9 Q. Let's look at -- there are a variety of column 14:35 10 headings. Some of these are obvious. "Model," that 11 just refers to the model being sold, correct? 12 A. Yes. 13 Q. "Prod Code," what does that stand for? 14 A. Product code. 14:35 15 Q. Is that a code generated by the vendor or by 16 MARTA? 17 A. Would have been MARTA. 18 Q. How about the column "Start Cost"? What does 19 that refer to? 14:35 20 A. That would have been the price sheet cost that 21 Thomson has provided. 22 Q. Does that include the three-percent discount 23 or not? 24 A. No. 14:36 25 Q. How about the next heading, "Ded A"? What</p>

<p style="text-align: right;">150</p> <p>1 does that stand for?</p> <p>2 A. Deduction. And A was a code for the</p> <p>3 deduction.</p> <p>4 Q. What does the deduction represent?</p> <p>14:36 5 A. It would have been a deduction that Thomson</p> <p>6 provided to MARTA that would have come off the face of</p> <p>7 the invoice.</p> <p>8 Q. Would that deduction also be reflected in the</p> <p>9 price ultimately paid by the member?</p> <p>14:37 10 A. Yes.</p> <p>11 Q. How about the next column, "Code A"? What</p> <p>12 does "Code A" stand for?</p> <p>13 A. I'm not sure. I think it's tied in some way</p> <p>14 to the Deduction A column.</p> <p>14:37 15 Q. How about the next column, "Ded B"? What does</p> <p>16 that stand for?</p> <p>17 A. It's Deduction B, and that would stand for the</p> <p>18 terms.</p> <p>19 Q. When you say "terms," what do you mean?</p> <p>14:37 20 A. MARTA had a -- it generally had a terms</p> <p>21 program with Thomson. So that would have been the</p> <p>22 deduction. The terms would have been for when they</p> <p>23 paid.</p> <p>24 Q. Oh, does that mean if -- if MARTA paid by a</p> <p>14:38 25 specific date, it got an additional discount?</p>	<p style="text-align: right;">152</p> <p>1 Q. What about Deduction D? Does that have any</p> <p>2 meaning to you?</p> <p>3 A. No.</p> <p>4 Q. What about Deduction E? Does that have any</p> <p>14:40 5 meaning to you?</p> <p>6 A. No.</p> <p>7 Q. Who at MARTA might know the meanings of</p> <p>8 Deductions D and Deductions E?</p> <p>9 A. Jeff Sokol.</p> <p>14:40 10 Q. If you could turn to the next page where there</p> <p>11 are some more column headings -- it's not paginated but</p> <p>12 it begins on the upper left-hand corner, "AP Net." Do</p> <p>13 you see that?</p> <p>14 MR. SHAW: It's one more the other way.</p> <p>14:40 15 BY MR. LAU:</p> <p>16 Q. What does "AP Net" stand for?</p> <p>17 A. Accounts payable net.</p> <p>18 Q. What does the next column, "Holdback," what</p> <p>19 does that represent?</p> <p>14:41 20 A. That would have been the roundup amount.</p> <p>21 Q. Do you see the next column heading "HB Code"?</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. What does that represent?</p> <p>14:41 25 A. Holdback code.</p>
<p style="text-align: right;">151</p> <p>1 A. Yeah. I haven't done the math, but it's</p> <p>2 probably three percent, if MARTA's passing -- providing</p> <p>3 a terms discount of three percent.</p> <p>4 Q. You think that the Deduction B might reflect</p> <p>14:38 5 that three percent.</p> <p>6 A. It's likely that it would be the same amount.</p> <p>7 Q. I see.</p> <p>8 Code B, do you have any understanding of what</p> <p>9 that means?</p> <p>14:38 10 A. Again, I think it's tied to the Deduction B.</p> <p>11 Q. I see columns for Deduction C, Deduction D and</p> <p>12 Deduction E, but there's no information listed below.</p> <p>13 Do either of those deductions have any meaning to you?</p> <p>14 A. It's probably in the setup of the spreadsheet,</p> <p>14:39 15 but I think, in other examples, that's where the</p> <p>16 administrative reimbursement was located, in C. It did</p> <p>17 not go to the dealers. That remained with MARTA to</p> <p>18 offset the overhead.</p> <p>19 Q. That would be Deduction C, correct?</p> <p>14:39 20 A. Yeah.</p> <p>21 Q. You say that would be the administrative</p> <p>22 reimbursement that remained with MARTA; is that correct?</p> <p>23 A. Yeah. The administrative reimbursement and</p> <p>24 the roundup would go into that bucket. That was used</p> <p>14:39 25 for admin.</p>	<p style="text-align: right;">153</p> <p>1 Q. And here, the holdback code is 08. Do you</p> <p>2 know what that means?</p> <p>3 A. I think it is a code for the formula that was</p> <p>4 used on the holdback.</p> <p>14:41 5 Q. The next column, DIR cost, do you see that?</p> <p>6 A. It's DLR.</p> <p>7 Q. Oh, I'm sorry. It's so small, even I can't</p> <p>8 read it. You're right. "DLR Cost." What does that</p> <p>9 represent?</p> <p>14:42 10 A. That would be the cost that was charged to the</p> <p>11 dealers.</p> <p>12 Q. On these various -- Mr. Thompson, these</p> <p>13 various column headings that we've just discussed, does</p> <p>14 it seem typical for the type of information recorded by</p> <p>14:42 15 MARTA for specific transactions?</p> <p>16 Let me restate that differently.</p> <p>17 Does this seem like the type of information</p> <p>18 that MARTA would report for sales generally, not just</p> <p>19 for the specific Thomson's show special we're looking</p> <p>14:42 20 at, but are these column headings that would normally be</p> <p>21 recorded by MARTA in the normal course of its business?</p> <p>22 A. Yes.</p> <p>23 Q. If you can keep on flipping through beyond</p> <p>24 that specific spreadsheet to the page that begins,</p> <p>14:43 25 "Items which have monthly trailing credits due."</p>

<p style="text-align: right;">154</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. What's a trailing credit?</p> <p>4 A. It was a credit that was provided. It was not</p> <p>14:43 5 taken off of the invoice but instead it was paid -- in</p> <p>6 this case, it was monthly, based on the products that</p> <p>7 were purchased.</p> <p>8 Q. So was this a credit paid by the vendor?</p> <p>9 A. No. By MARTA.</p> <p>14:44 10 Q. And MARTA would pay this trailing credit to</p> <p>11 its members, correct?</p> <p>12 A. Yes.</p> <p>13 Q. How were these trailing credits determined?</p> <p>14 A. It was negotiated as part of the Thomson</p> <p>14:44 15 program.</p> <p>16 Q. Where would MARTA get the funds for these</p> <p>17 trailing credits?</p> <p>18 A. From Thomson.</p> <p>19 Q. And this would be the same -- the same</p> <p>14:44 20 formula, if you would, for not just Thomson but for the</p> <p>21 other vendors; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Mr. Thompson, look under the -- under the</p> <p>24 heading -- and there are various columns. There's</p> <p>14:45 25 "Model." And then right next to "Model," it appears to</p>	<p style="text-align: right;">156</p> <p>1 percent co-op, this is an amount paid by Thomson to</p> <p>2 MARTA, and then MARTA would pay that exact amount to its</p> <p>3 members; is that correct?</p> <p>4 A. MARTA might have earned two percent, and MARTA</p> <p>14:47 5 might have plugged in 1.5 percent for this particular</p> <p>6 program and retained some advertising money for other</p> <p>7 programs that they were funding.</p> <p>8 Q. I understand.</p> <p>9 Look at next column over that says "MIB</p> <p>14:47 10 ALLOW." Do you see that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. What does that stand for?</p> <p>13 A. I can't remember what MIB stands for. I'm</p> <p>14 thinking that it was most likely an allowance that was</p> <p>14:48 15 provided by Thomson.</p> <p>16 Q. To whom?</p> <p>17 A. To MARTA.</p> <p>18 Q. And what would MARTA do with those funds?</p> <p>19 A. Factor it into the pricing.</p> <p>14:48 20 Q. What about the next column over, "Show T/C"?</p> <p>21 What does that stand for?</p> <p>22 A. That would be the show trailing credit.</p> <p>23 Q. And who would provide those funds?</p> <p>24 A. MARTA would provide those funds to the member</p> <p>14:48 25 as a trailing credit.</p>
<p style="text-align: right;">155</p> <p>1 read, "1.50% COOP." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. What is 1.50 co-op? What is that referring</p> <p>4 to?</p> <p>14:45 5 A. The negotiated rate of co-op advertising that</p> <p>6 was paid to MARTA on that particular model.</p> <p>7 Q. Is this the type of co-marketing fund that we</p> <p>8 discussed earlier?</p> <p>9 A. No, not necessarily. This would have been --</p> <p>14:45 10 this is a show program. The other part was not a</p> <p>11 show-related item. That was an overall annual business</p> <p>12 plan type thing.</p> <p>13 Q. I see. So who would provide the funds for the</p> <p>14 1.5 percent co-op?</p> <p>14:46 15 A. Thomson paid it to MARTA.</p> <p>16 Q. And what would MARTA do with these funds?</p> <p>17 A. They paid it on to the dealers, based on their</p> <p>18 purchases.</p> <p>19 Q. Would any of co-op funds be retained by MARTA?</p> <p>14:46 20 A. The formula that we have here, MARTA wouldn't</p> <p>21 slice off any of these funds, if that's what you're</p> <p>22 referring to. In the Thomson program, there might have</p> <p>23 been co-op funds that MARTA retained prior to passing or</p> <p>24 putting the 1.5 percent co-op allowance there.</p> <p>14:47 25 Q. So the best of your understanding, this 1.5</p>	<p style="text-align: right;">157</p> <p>1 Q. There's three concepts that we've just</p> <p>2 discussed: the co-op, the MIB allow, and the show</p> <p>3 trailing credit. Are these types of adjustments that</p> <p>4 would be just for Thomson, or would they be for all</p> <p>14:49 5 vendors?</p> <p>6 A. This would have been for Thomson.</p> <p>7 Q. In this example, yes, but are there other</p> <p>8 instances where other vendors might have the co-op funds</p> <p>9 listed here or the MIB allow adjustment listed here with</p> <p>14:49 10 the show trailing credit?</p> <p>11 A. Yes.</p> <p>12 Q. Just so I understand correctly, the trailing</p> <p>13 credit, the gist behind that would be if a member</p> <p>14 purchases a specific amount during a specific period of</p> <p>14:50 15 time, then MARTA issues a trailing credit because</p> <p>16 they've met whatever goal has been set forth. Is my</p> <p>17 understanding correct?</p> <p>18 A. Well, they would have had to purchase the</p> <p>19 product to get a -- the trailing credit would come after</p> <p>14:50 20 the product ships for it to qualify.</p> <p>21 Q. I see. Where did MARTA come up with the money</p> <p>22 to pay these trailing credits?</p> <p>23 A. Some of it was funded by Thomson in their</p> <p>24 marketing funds. And as I just look at the sheet here,</p> <p>14:51 25 you can see some examples where some of it was -- it</p>

<p style="text-align: right;">158</p> <p>1 looks to be -- it looks to be funded -- MARTA would have 2 taken it out of the budget that was provided by Thomson. 3 Q. How can you tell that? 4 A. Most of the numbers match up very closely. 14:51 5 The column heading that says, "Trailing Program 6 Analysis," over on the -- 7 Q. Yes, I see it. 8 A. -- center there, what this looks like is an 9 evaluation of, did MARTA recover enough money to pay for 14:52 10 the program that was provided on the left? 11 Q. I understand. 12 Okay. You can put that document aside, Mr. 13 Thompson. 14 Did MARTA ever receive funds from vendors that 14:53 15 would allow members to purchase products at a reduced 16 price based on specific time of the year, like a holiday 17 special? 18 A. Would you say that again? 19 Q. Did MARTA ever receive money by vendors 14:53 20 that -- to promote sales around specific holiday 21 periods; for example, like a Black Friday promotion or 22 something like that? 23 A. Yes. 24 Q. And how would those programs work? 14:54 25 A. They would provide a certain amount of funds.</p>	<p style="text-align: right;">160</p> <p>1 members. 2 Q. Would these additional promotional funds, were 3 they limited to the specific vendor that provided it? 4 Say, for example, Panasonic was providing promotional 14:56 5 funds around the holiday period. Would that money be 6 used for the members just to promote the Panasonic 7 product? 8 A. Yes. 9 Q. Were these holiday promotions recorded 14:56 10 somewhere in MARTA's books and records? 11 A. I assume so. 12 Q. Who would know the answer to that? 13 A. Jeff Sokol. 14 Q. Did MARTA have any programs involving coupons, 14:57 15 where coupons would be provided to the members; and if 16 the ultimate purchaser purchased something and sent in a 17 coupon, they would get an extra rebate back or something 18 of that nature? Any programs like that? 19 A. Yes. I referred to them earlier as consumer 14:57 20 rebates. 21 Q. Oh, consumer rebates. That's right. 22 And how would those consumer rebates work? 23 A. The -- there would be an arranged or a 24 predetermined rebate, whether it be 25, 35 or 50 bucks 14:57 25 or \$100 on a product. And if the consumer bought it</p>
<p style="text-align: right;">159</p> <p>1 It was negotiated based on, last year you purchased this 2 amount of product during this period of time. And the 3 request may have come in: We need some additional 4 marketing help to promote the product and get more 14:54 5 volume next year for this upcoming promotional period. 6 And a request would go in. Potentially, it could be a 7 rebate or a consumer finance offer or a combination of 8 the above. 9 Q. Do you know what times of the year these 14:54 10 additional promotional funds would come from vendors? 11 We discussed Black Friday. Can you think of any other 12 time of the year where these holiday promotions might 13 come into play? 14 A. Around some of the, I'd say, traditional 14:55 15 holidays: Memorial Day, Fourth of July, Labor Day, you 16 know, holidays of that type. 17 Q. Who would negotiate these holiday promotion 18 credits, for lack of a better term? Would that be 19 something that you would do in your capacity as 14:55 20 executive director? Would it be something that the 21 vendors would raise on their own? 22 A. Well, the director would be the point person 23 to get it started, negotiate with the vendors. And 24 then, depending upon how much funding came in, then the 14:56 25 director would decide how to best divvy it up among the</p>	<p style="text-align: right;">161</p> <p>1 from any of the members, that consumer was given a form 2 to fill out. And the form had the redemption process. 3 They had to mail it into somebody -- the redemption 4 center. The redemption center fulfilled the check back 14:58 5 to the consumer. 6 Q. Who provided funds for these consumer rebates? 7 Was it MARTA or the vendor? 8 A. The vendor provided the funds to MARTA, and 9 then MARTA would fund it with the vendor. 14:58 10 Q. Mr. Thompson, are you familiar with the term 11 "price protection"? 12 A. Yes. 13 Q. And what does that term mean to you? 14 A. If you own product at a certain price and the 14:58 15 price is then reduced, the amount of product that you 16 have in your existing inventory is protected by an 17 offset or a repayment down to the -- so your inventory 18 is basically brought down to the current market price. 19 Q. Okay. Were purchases made by members via 14:59 20 MARTA's central billing, were they all subject to price 21 protection? 22 A. Yes. 23 Q. Is the -- was the requirement for price 24 protection memorialized in some sort of agreement with 14:59 25 the vendors?</p>

<p style="text-align: right;">162</p> <p>1 A. It would have been part of the annual 2 negotiation. 3 Q. But, as you sit here today, your understanding 4 that during the relevant time period -- and let's limit 15:00 5 ourselves just to CRT televisions because that's what we 6 care about -- that all CRT televisions purchased through 7 MARTA's central billing system, they were all subject to 8 price protection; is that correct? 9 A. Yes. 15:01 10 Q. Were there any limitations as to how long a 11 purchase could sit in inventory and still be covered by 12 price protection? 13 A. Yes. 14 Q. What were those limitations? 15:01 15 A. It would vary upon the situation and the 16 amount of time provided when a price dropped. If the 17 price was going to be reduced in, say, 30 days, members 18 had, you know, a heads up so they could make sure they 19 moved through the merchandise. If they were advised on 15:01 20 Friday that the price was going to be reduced on Monday, 21 then you'd take a snapshot of what was in inventory on 22 that specific day. 23 Q. Okay. But the specific terms of price 24 protection, that would be something negotiated with 15:01 25 the -- with the vendors, correct?</p>	<p style="text-align: right;">164</p> <p>1 Q. Do you have any reason to believe that this 2 document is not authentic? 3 A. No. 4 Q. This document appears to discuss the 15:06 5 transition, MARTA central billing to Expert Warehouse; 6 is that correct? 7 A. Well, it's the -- in essence the ending of the 8 central bill program. 9 Q. The second paragraph it reads, "Orders will 15:06 10 not be accepted into the MARTA billing system after 11 March 29, 2006." Do you see that sentence? 12 A. Yes. 13 Q. March 29, 2006, was that the end of, you know, 14 the MARTA billing system in terms of -- with the 15:06 15 exception of what we talked earlier about Sharp and 16 Toshiba. They were set off and aside. But for everyone 17 else, was that the cutoff date, March 29, 2006? 18 A. Yes. 19 Q. And it says in the next paragraph, "After 15:06 20 April 1, 2006, the invoice from the factory will be sent 21 to Expert Finance, another flooring company or directly 22 to your company if you wish." Do you see that? 23 A. Yes. 24 Q. Is that an accurate statement of how invoices 15:07 25 would change after April 1, 2006?</p>
<p style="text-align: right;">163</p> <p>1 A. Yes. 2 Q. Did price protection continue after central 3 billing was phased out in favor of Expert Warehouse? 4 A. I don't know. 15:02 5 Q. Who would know? 6 A. You'd have to talk to Expert Warehouse. 7 MR. LAU: I'd like to mark, as a new exhibit, 8 Exhibit No. 2491, a document entitled 9 CRT-MARTA-0032288. It's a one-page document 15:04 10 entitled "Central Billing Transition." 11 (Exhibit 2491 was marked for Identification.) 12 BY MR. LAU: 13 Q. Please read this document. And once you've 14 had a chance to read it, let me know. 15:05 15 A. Okay. 16 Q. Do you recognize this document, Mr. Thompson? 17 A. Yes. 18 Q. What is this document? 19 A. It's the central billing transition. 15:05 20 Q. Did MARTA generate this document in the 21 ordinary course of its business? 22 A. Yes. 23 Q. Would MARTA rely upon these types of documents 24 for purposes of conducting its business? 15:05 25 A. Yes.</p>	<p style="text-align: right;">165</p> <p>1 A. Yes. 2 Q. When that sentence reads "another flooring 3 company," what is that referring to? 4 A. Another flooring company? 15:07 5 Q. Yes. The second sentence of the third 6 paragraph, "The difference is after April 1, 2006, 7 invoice from the factory will be sent to Expert Finance, 8 another flooring company or directly to your company if 9 you wish." 15:07 10 A. Okay. Depending upon the brand that was being 11 purchased, Expert Finance was a wholesale finance 12 company, okay? There were other wholesale finance 13 companies. TCFC was one of them, for example. Or 14 directly to your company, and that would have been an 15:08 15 open account if the member had an open account 16 established as an open-account relationship. 17 Q. So flooring company in this context refers to 18 some sort of wholesale finance company? 19 A. Wholesale financing, yes. 15:08 20 Q. Do you see the last paragraph? It reads, 21 "Price Protection that is paid through MARTA will 22 continue to be paid in that manner and trailing funds 23 from Toshiba will also be sent to you by MARTA." Do you 24 see that sentence? 15:08 25 A. Yes.</p>

<p style="text-align: center;">166</p> <p>1 Q. What does that sentence mean to you?</p> <p>2 A. Any price protection that would be due would</p> <p>3 continue to be paid through MARTA.</p> <p>4 Q. Would that be for preexisting orders or for</p> <p>15:08 5 future orders, as well?</p> <p>6 A. It would have been for the existing orders</p> <p>7 that were part of the central billing.</p> <p>8 Q. Okay. You can put that document down.</p> <p>9 When a member sought to get price protection,</p> <p>15:09 10 who would they contact?</p> <p>11 A. It would be dependent upon the time, but --</p> <p>12 Q. Let's say during the central billing system.</p> <p>13 A. In all likelihood, Aimee Fields would have</p> <p>14 been probably the point person.</p> <p>15:09 15 Q. Who would -- if a party asked for price</p> <p>16 protection, I assume that would come in the form of like</p> <p>17 an additional check from somebody to make up for the</p> <p>18 difference that the price had changed? How would the</p> <p>19 member be reimbursed for price protection?</p> <p>15:10 20 A. The member would request price protection from</p> <p>21 MARTA for the amount of product that they had in stock</p> <p>22 that -- where the price had been reduced.</p> <p>23 Q. And let's say, hypothetically, the price that</p> <p>24 the member purchased was a hundred and that it had</p> <p>15:10 25 merchandise in inventory that it purchased at a hundred</p>	<p style="text-align: center;">168</p> <p>1 would then be taken off the price of the product and</p> <p>2 passed along to the members.</p> <p>3 Q. So in your example of a \$25 price adjustment,</p> <p>4 that would be something that the vendor would decide,</p> <p>15:12 5 and that \$25 price adjustment, that would -- that would</p> <p>6 find its way to the members, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Would the price adjustment be made through</p> <p>9 MARTA and then from MARTA to the member or directly from</p> <p>15:12 10 the vendor to the member?</p> <p>11 A. The member was buying it from MARTA, so it was</p> <p>12 from MARTA to the member.</p> <p>13 Q. And in your example of a \$25 price adjustment,</p> <p>14 if that's the price adjustment provided by the vendor to</p> <p>15:13 15 MARTA, MARTA would provide a \$25 price adjustment to the</p> <p>16 member, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And would -- I take it that these price</p> <p>19 adjustments, when they occurred, that they would somehow</p> <p>15:13 20 be recorded in MARTA's books and records?</p> <p>21 A. Yes.</p> <p>22 Q. Would they be recorded in the sale-specific</p> <p>23 transactional data that MARTA maintained, or would they</p> <p>24 be recorded someplace else?</p> <p>15:13 25 A. They would have been recorded in the data. In</p>
<p style="text-align: center;">167</p> <p>1 but the price dropped to 90. And so they want to be</p> <p>2 reimbursed for the fact that they bought at a hundred</p> <p>3 but now it's 90. How do they get -- what are the actual</p> <p>4 mechanics of them getting reimbursed?</p> <p>15:10 5 A. They would have had to show how much product</p> <p>6 they may have purchased -- or that they had in inventory</p> <p>7 at the time when the price was reduced.</p> <p>8 Q. Who provides the funds for that?</p> <p>9 A. That would have been from the vendor.</p> <p>15:11 10 Q. From the vendor. Okay.</p> <p>11 Mr. Thompson, have you ever heard of the term</p> <p>12 "price adjustment"?</p> <p>13 A. Yes.</p> <p>14 Q. What does the term "price adjustment" mean to</p> <p>15:11 15 you?</p> <p>16 A. Where a vendor decides to lower the price of a</p> <p>17 product. And they're, in essence, adjusting the retail</p> <p>18 that they expect to see in the marketplace by lowering</p> <p>19 that price.</p> <p>15:11 20 Q. So what are the mechanics of the price</p> <p>21 adjustment when it occurs? Who does what?</p> <p>22 A. The vendor would typically start by -- their</p> <p>23 terminology was "PA" for price adjustment. Put a --</p> <p>24 whatever price adjustment. It they wanted to lower it</p> <p>15:12 25 25 bucks, they would put \$25 PA on the product. That</p>	<p style="text-align: center;">169</p> <p>1 all likelihood, Column A was what we discussed earlier.</p> <p>2 Q. Mr. Thompson, are you familiar with the term</p> <p>3 "sell-through credit"? Sell-through credit, S-E-L-L?</p> <p>4 A. Yeah, I think I know what that means, but</p> <p>15:14 5 that's not a normal part of the vocabulary.</p> <p>6 Q. What do you think it means?</p> <p>7 A. Well, it's a credit that is provided once</p> <p>8 the -- whether it be MARTA or whether it be the</p> <p>9 purchaser -- sells the product.</p> <p>15:15 10 Q. But you're not familiar with MARTA using that</p> <p>11 terminology in the course of its business.</p> <p>12 A. It may have been used, but it wasn't anything</p> <p>13 that I was -- that I used in my past history and since</p> <p>14 I've come on with MARTA.</p> <p>15:15 15 Q. Are you familiar with the term "SPIFF"?</p> <p>16 A. Yes.</p> <p>17 Q. What's a SPIFF?</p> <p>18 A. It's an incentive provided to the retail</p> <p>19 salesperson for the sale of a product.</p> <p>15:15 20 Q. Did MARTA provide SPIFFs during the relative</p> <p>21 time period?</p> <p>22 A. MARTA would acquire SPIFF money from the</p> <p>23 vendors and pass it along to the members.</p> <p>24 Q. So, for example, if a specific vendor provided</p> <p>15:16 25 SPIFF money, that would be provided to members to</p>

<p style="text-align: right;">170</p> <p>1 promote that vendor's merchandise; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And would the entirety of the SPIFF money be</p> <p>4 directed to the member companies, or would MARTA keep</p> <p>15:16 5 anything for itself?</p> <p>6 A. Well, at the end of the day, MARTA had</p> <p>7 overhead. So, certainly, there was some of it that was</p> <p>8 maybe not passed along but a good amount of it was.</p> <p>9 Q. Any specific formula used by MARTA to</p> <p>15:16 10 determine what amount of SPIFF moneys would be sent to</p> <p>11 the members and what amount would be retained by MARTA</p> <p>12 for its overhead of whatever purpose?</p> <p>13 A. No. That was more of a situational source of</p> <p>14 revenue.</p> <p>15:16 15 Q. Are you familiar with the term "bundle</p> <p>16 discount"?</p> <p>17 A. Yes.</p> <p>18 Q. And what does that term mean?</p> <p>19 A. If you buy more than one item, say, from a</p> <p>15:17 20 supplier, you'll get an additional discount over and</p> <p>21 above the single-product discount that you normally</p> <p>22 would get.</p> <p>23 Q. Did MARTA ever provide bundle discounts?</p> <p>24 A. Yes.</p> <p>15:17 25 Q. Who would provide the funds for these bundle</p>	<p style="text-align: right;">172</p> <p>1 would that be reflected in MARTA's books and records, if</p> <p>2 at all? If there was a specific warranty that MARTA</p> <p>3 provided through a warranty provider, would that be</p> <p>4 reflected at all in MARTA's own books and records?</p> <p>15:20 5 A. Yeah. It would have been under one of the</p> <p>6 promotional expenses.</p> <p>7 Q. Okay. Do you recall which promotional expense</p> <p>8 it might be -- might capture that figure?</p> <p>9 A. No, I don't.</p> <p>15:20 10 MR. LAU: I'm going to hand out another</p> <p>11 document. Please mark this as Exhibit 2492. And</p> <p>12 this is a document with Bates No.</p> <p>13 CRT-MARTA-0003058. It's a document that goes on</p> <p>14 for five pages. It's entitled "Philips T1 Pricing</p> <p>15:21 15 - Effective January 1 through March 31, 2002."</p> <p>16 (Exhibit 2492 was marked for Identification.)</p> <p>17 BY MR. LAU:</p> <p>18 Q. Please take a moment to review this document.</p> <p>19 And once you've done so, let me know.</p> <p>15:22 20 A. Okay.</p> <p>21 Q. Mr. Thompson, do you recognize this document?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. It's the Philips pricing, effective July -- or</p> <p>15:22 25 January 1 through March 31st, 2002.</p>
<p style="text-align: right;">171</p> <p>1 discounts?</p> <p>2 A. It was a combination of the vendor and MARTA.</p> <p>3 Q. In the context of CRT televisions, do you</p> <p>4 recall any bundle discounts being provided by MARTA?</p> <p>15:18 5 A. By who?</p> <p>6 Q. By MARTA.</p> <p>7 A. Yes.</p> <p>8 Q. For what specific bundles come to mind?</p> <p>9 A. Well, there might have been stands. If you</p> <p>15:18 10 buy this TV, you get the stand. That would have been an</p> <p>11 example of a bundle discount.</p> <p>12 Q. Who determined what bundles would be</p> <p>13 appropriate for a discount, the vendor or MARTA?</p> <p>14 A. It would be a collaboration with the vendor</p> <p>15:18 15 and with the director.</p> <p>16 Q. Did MARTA ever sell CRT televisions with a</p> <p>17 warranty separate and apart from the warranty provided</p> <p>18 by the vendor?</p> <p>19 A. MARTA had an arrangement with a warranty</p> <p>15:19 20 provider. Occasionally, they would run some promotions</p> <p>21 where they would buy the service contract. It's</p> <p>22 somewhat like what we were describing before as a --</p> <p>23 with the marketing tactics.</p> <p>24 Q. If this warranty was -- if such a warranty was</p> <p>15:19 25 associated with a specific television sold by MARTA, how</p>	<p style="text-align: right;">173</p> <p>1 Q. Would MARTA generate these types of documents</p> <p>2 in the ordinary course of its business?</p> <p>3 A. Yes.</p> <p>4 Q. Would MARTA rely upon these documents in the</p> <p>15:22 5 ordinary course of its business?</p> <p>6 A. Yes.</p> <p>7 Q. Any reason to believe that this document is</p> <p>8 not authentic?</p> <p>9 A. No.</p> <p>15:22 10 Q. Mr. Thompson, does this reflect a special show</p> <p>11 price for Philips, or is this the normal program for</p> <p>12 Philips for this specific time period?</p> <p>13 A. This would appear to be the normal show</p> <p>14 program -- or I'm sorry -- the normal price sheet, not a</p> <p>15:23 15 show program.</p> <p>16 Q. Do you see the first line underneath the</p> <p>17 heading that says, "2% 20, net 30 terms"? Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>15:23 20 Q. What does that stand for?</p> <p>21 A. The member, if paid in 20 days, could take a</p> <p>22 two percent deduction. If they took 30 days, the terms</p> <p>23 would be net.</p> <p>24 Q. Do you see under the line that says "Program,"</p> <p>15:23 25 the next line under reads, "\$5000 order for freight</p>

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1 minimum, or 3% freight charge." Do you see that?

2 A. Yes.

3 Q. What does that mean?

4 A. In order for the member to qualify for free

15:24 5 freight, they would have to place an order that totaled

6 more than \$5,000. Or if it was less than that, they

7 would get a three percent freight charge.

8 Q. And the next line below that reads, "1.5%

9 Merchandise fund (not on Magnavox product) paid

15:24 10 monthly." Do you see that?

11 A. Yes.

12 Q. What does that mean?

13 A. The member would earn 1.5 percent on their

14 purchases that were not Magnavox-branded product, and it

15:24 15 would be paid monthly in trailing -- in the form of

16 trailing.

17 Q. Why does that make reference to merchandise

18 fund? Is that the source of the fund -- the source of

19 the money for this 1.5 percentage discount?

15:25 20 A. It's what we called -- called it when we gave

21 it to the members.

22 Q. Okay. Were there any quantity requirements in

23 order to qualify for this 1.5 percent trailing credit?

24 A. No.

15:25 25 Q. So any member, even if they made one purchase

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1 from Philips, of, say, for example, one television, they

2 would still be entitled to that 1.5 percent credit at

3 the end of the month; is that correct?

4 A. Yes.

15:25 5 Q. If you look at the -- if you look at the

6 column headings, we see the same column headings that we

7 saw earlier with Thomson. We see -- there's a Start

8 Cost, the Deduction A, Code A, Deduction B, Code B,

9 Deduction C, D and E. And we see the AP net, which we

15:26 10 also saw in the Thomson sheet. You see the holdback,

11 the HB code and the DLR -- here it's spelled out dealer

12 cost.

13 A. Yes.

14 Q. That was reflected on the Thomson spreadsheet,

15:26 15 if you'll recall.

16 And we're seeing this again here because this

17 would be typically how MARTA would record sales-specific

18 transactions; is that correct or -- no. I'm sorry --

19 how it would record information in its transactional

15:27 20 database.

21 MR. SHAW: Object to the form.

22 THE WITNESS: Can you give me the last part of

23 that question again?

24 BY MR. LAU:

15:27 25 Q. We're seeing -- I'm trying to understand why

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1 we're seeing the same columns for Thomson and we're

2 seeing those same columns here. Is it because this is

3 how MARTA would typically record information in its

4 transactional database? It would use these types of

15:27 5 column headings?

6 A. Yes.

7 Q. Going back one last question here, Mr.

8 Thompson, going back to the line of this two percent 20,

9 net 30 terms --

15:28 10 A. Yes.

11 Q. -- would there be -- would those be standard

12 terms for all of MARTA's members, or would those be

13 something that would be determined on a vendor-specific

14 basis or member-specific basis, for that matter?

15:28 15 MR. SHAW: Object to the form.

16 THE WITNESS: Did you ask it on member or the

17 vendor? Help me out so I understand what your

18 you're --

19 BY MR. LAU:

15:28 20 Q. Let me ask you this: Would it be determined

21 on a vendor-specific basis, or would these terms be for

22 all vendors?

23 A. It would likely be vendor by vendor because

24 the vendor may be subsidizing it somewhat to the member.

15:29 25 Q. Okay. You can put that down.

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1 Earlier we discussed the scenario where maybe

2 a member received merchandise that was damaged or

3 defective and might want to return that. Can you think

4 of any other reason why a member might want to return

15:29 5 merchandise that it had purchased through MARTA central

6 billing?

7 A. Well, it could have been some situations where

8 the order was placed and it went on back order and it's

9 then not filled until six, eight, ten weeks later. And,

15:30 10 by that time, the dealer might have sold something else

11 or sold a display model off the floor. And it's

12 probably something that should have been cancelled, you

13 know, earlier, but it somehow got into the system and no

14 one took care of it, so --

15:30 15 Q. And if you could put a number on it, these

16 sales returns, did they occur frequently? Occasionally?

17 Rarely?

18 A. Rarely.

19 Q. When they did occur, they would be recorded in

15:30 20 MARTA's books and records; is that correct?

21 A. Yes.

22 Q. Would there be any fee charged by MARTA for a

23 sales return?

24 A. Generally, no. I would have the return by

15:31 25 the -- per the policy that was put together.

<p style="text-align: right;">178</p> <p>1 Q. You say "generally, no." Were there any 2 exceptions to that general rule? 3 A. I'm sure there were some exceptions. 4 Sometimes things took a long time to get -- for all of 15:31 5 the paperwork to catch up, where an order might have 6 been -- might have landed to a member's warehouse and 7 the guy who purchased it didn't realize that it even had 8 shipped or fulfilled. And all of a sudden he's saying, 9 look, I have no use for this. And it's been past our 15:32 10 normal guidelines. So there were some fires that we had 11 to put out. 12 Q. Did MARTA ever sell any refurbished CRT 13 televisions? 14 A. No. 15:32 15 Q. Did MARTA ever carry certain brands of CRT 16 televisions exclusive of others? For example, we looked 17 at Philips. Did Philips come in and say, yes, we will 18 sell you CRT televisions but not -- but if we sell 19 televisions to you, you can't carry Hitachi or something 15:32 20 along those lines? 21 A. No. 22 Q. Were there any vendors that sold CRT 23 televisions through the MARTA central billing program 24 exclusively? That is to say, this is the only way that 15:33 25 they sold CRT televisions?</p>	<p style="text-align: right;">180</p> <p>1 document is not accurate? 2 A. No. 3 Q. Mr. Thompson, what does the term "SPA" mean, 4 as used in this document? 15:36 5 A. Sales promotion allowance. 6 Q. And what's a sales promotion allowance? 7 A. In this case, it's an allowance that's taken 8 off of the price of the product. 9 Q. And why would this allowance be provided? 15:37 10 A. Based on the timing of this program, two 11 reasons: It's a show program, number one. But it looks 12 like it's probably the end of the year, the fiscal year, 13 so Toshiba was closing out the product. 14 Q. Any other reasons? 15:37 15 A. No. 16 Q. Okay. Who would provide the funds for a sales 17 promotion allowance? 18 A. The vendor. 19 Q. And the vendor would provide these funds to 15:37 20 MARTA; is that correct? 21 A. Yes. 22 Q. And MARTA would then provide these funds to 23 the members making the purchase; is that correct? 24 A. Yes. 15:38 25 Q. Now, this specific example refers to Toshiba,</p>
<p style="text-align: right;">179</p> <p>1 A. No. 2 Q. During the relevant time period, did MARTA 3 have any preferred suppliers for CRT televisions? 4 A. No. 15:34 5 MR. LAU: I'll pull out another document. 6 Let's mark this document as Exhibit 2493. And this 7 is a document with Bates No. CRT-MARTA-0011581. 8 It's entitled "MARTA Show Specials." 9 (Exhibit 2493 was marked for Identification.) 15:35 10 BY MR. LAU: 11 Q. Let me know when you've had a chance to read 12 this document, Mr. Thompson. 13 A. Okay. 14 Q. Mr. Thompson, do you recognize this document? 15:36 15 A. Yes. 16 Q. And what is this document? 17 A. It is a MARTA show special from February 7th 18 to the 28th, with orders shipping by March 31st, 2006. 19 Q. Would MARTA generate these types of documents 15:36 20 in the normal course of its business? 21 A. Yes. 22 Q. Would MARTA rely upon these documents during 23 the course of its normal course of business? 24 A. Yes. 15:36 25 Q. Do you have any reason to believe that this</p>	<p style="text-align: right;">181</p> <p>1 but are you aware of other sales promotion allowances 2 taking place for other vendors? 3 A. Most likely. 4 Q. And were the mechanics of those special price 15:38 5 allowances the same as you've just discussed for the 6 Toshiba example here? 7 A. Probably. 8 Q. You see at the bottom in very small font, 9 there's a sentence that reads, "All Toshiba SPA's will 15:38 10 be given off invoice." Do you see that? 11 A. Yes. 12 Q. What does that sentence mean? 13 A. Well, the sales promotion allowance comes off 14 the invoice, as it's invoiced to the MARTA member. 15:39 15 Q. Oh, I see how you're reading that. I 16 understand. Okay. Thank you. 17 You can put that document away, please. Let's 18 look at another document. 19 I'll hand to the Court Reporter a document 15:40 20 with the Bates No. CRT-MARTA-0019734. It's a document 21 goes on for about 12 pages. It's entitled "MARTA 22 Cooperative of America, Inc., Manufacturer Credits." 23 (Exhibit 2494 was marked for Identification.) 24 BY MR. LAU: 15:40 25 Q. Please take a moment to review this document.</p>

<p style="text-align: right;">182</p> <p>1 And once you've done so, let me know.</p> <p>2 A. Okay.</p> <p>3 Q. Mr. Thompson, do you recognize this document?</p> <p>4 A. Yes.</p> <p>15:41 5 Q. And what is this document?</p> <p>6 A. MARTA Co-op of America's manufacturer credits.</p> <p>7 Q. Would MARTA generate these types of documents</p> <p>8 in the normal course of its business?</p> <p>9 A. Yes.</p> <p>15:41 10 Q. Would MARTA rely upon these documents in the</p> <p>11 normal course of its business?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any reason to believe why this</p> <p>14 document is not authentic?</p> <p>15:42 15 A. No.</p> <p>16 Q. Mr. Thompson, on the first page, there's a</p> <p>17 reference to Panasonic, and it says "Quarterly Rebate"</p> <p>18 under "Type of Credit." Do you see that?</p> <p>19 A. Yes.</p> <p>15:42 20 Q. What does that represent?</p> <p>21 A. It would have been a rebate paid quarterly.</p> <p>22 Q. By whom?</p> <p>23 A. By Panasonic.</p> <p>24 Q. Any requirements for the members to qualify</p> <p>15:42 25 for this rebate?</p>	<p style="text-align: right;">184</p> <p>1 interchangeable with co-op.</p> <p>2 Q. And right beneath that, there appears to be an</p> <p>3 abbreviation that appears to stand for market funds.</p> <p>4 How do you read that term?</p> <p>15:44 5 A. Market development funds or merch funds.</p> <p>6 Q. And what do you think that -- what does that</p> <p>7 represent? What does that mean?</p> <p>8 A. It would have been a fund that would be</p> <p>9 utilized to help market the product other than</p> <p>15:45 10 advertising.</p> <p>11 Q. And below that, you see a reference to AC</p> <p>12 rebate.</p> <p>13 A. Yes.</p> <p>14 Q. Do you see that?</p> <p>15:45 15 A. Yes.</p> <p>16 Q. What does that mean?</p> <p>17 A. I believe that's their air conditioning volume</p> <p>18 rebate.</p> <p>19 Q. I understand.</p> <p>15:45 20 Mr. Thompson, we've discussed over the past</p> <p>21 hour or two a number of different adjustments to the</p> <p>22 price. Other than the adjustments that we have talked</p> <p>23 about, are there any other adjustments that took place</p> <p>24 that would affect the price paid by members?</p> <p>15:46 25 A. Not that I can think about.</p>
<p style="text-align: right;">183</p> <p>1 A. No.</p> <p>2 Q. And under "Thomson," there's two references:</p> <p>3 "Coop" and "Merch." What do those terms mean?</p> <p>4 A. Co-op would be co-op advertising. Merch would</p> <p>15:43 5 be merchandising.</p> <p>6 Q. Look down to Toshiba. There's no entry under</p> <p>7 "Type of Credit." But under "Percentage," it says "2%."</p> <p>8 Do you see that?</p> <p>9 A. Yes. Yes.</p> <p>15:43 10 Q. What does that reflect?</p> <p>11 A. I'm not exactly -- since it doesn't have a</p> <p>12 description, I can't say for sure. I think it's a</p> <p>13 volume rebate.</p> <p>14 Q. If you look to the first, second, third,</p> <p>15:44 15 fourth, fifth, sixth page, there's a spreadsheet that</p> <p>16 has -- there's a reference to LG Goldstar. Do you see</p> <p>17 that?</p> <p>18 A. Midway?</p> <p>19 Q. Yes. Correct.</p> <p>15:44 20 A. Okay.</p> <p>21 Q. And do you see the line that reads "ADV,</p> <p>22 2.00%?"</p> <p>23 A. Yes.</p> <p>24 Q. What does that stand for?</p> <p>15:44 25 A. It would be advertising or probably</p>	<p style="text-align: right;">185</p> <p>1 Q. Remember we had a discussion earlier today</p> <p>2 about holdbacks --</p> <p>3 A. Yes.</p> <p>4 Q. -- or core models? I was a little confused as</p> <p>15:46 5 to how the mechanics of that worked. I was wondering if</p> <p>6 you could run it through me again and maybe start by</p> <p>7 explaining to me what the term "holdback" means.</p> <p>8 A. "Holdback" and "roundup," those terms could</p> <p>9 probably be interchangeable. I think we've talked at</p> <p>15:47 10 great length about the formula, of how we got to the</p> <p>11 pricing. We can get to the AP net and then you would</p> <p>12 get to the roundup. And we had a couple of examples of</p> <p>13 that where there was a roundup formula. Generally it</p> <p>14 rounded up to the next dollar but not always. It might</p> <p>15:47 15 round up a couple dollars or two. And that -- that</p> <p>16 bucket of money has commonly been referred to as the</p> <p>17 merch budget, and the merch budget was utilized to</p> <p>18 offset the cost of operations and fund the core model</p> <p>19 program.</p> <p>15:48 20 Q. Who would decide whether the roundup would be</p> <p>21 up to the next dollar or something greater, say, a</p> <p>22 dollar or two more? Who would make that decision?</p> <p>23 A. Generally, the director would make that</p> <p>24 decision after consulting with the financial either</p> <p>15:48 25 manager or CFO.</p>

<p style="text-align: right;">186</p> <p>1 Q. Would the director consult with -- for CRT 2 televisions, would the director consult with the 3 Electronics Committee? 4 A. Potentially but not likely. The director 15:48 5 would already have enough guidance once the decision was 6 made on the pricing of the product that a dollar or two, 7 in most cases, won't make much difference. 8 Q. Was the -- was the roundup any more than a 9 dollar or two? 15:49 10 A. I'm sure there were some situations where it 11 was more, but the general rule of thumb was round up to 12 the next dollar. 13 Q. And would these roundups or holdbacks, would 14 they be reflected in MARTA's transactional data? 15:49 15 A. Yes. 16 Q. On a sales-specific basis so you could tell, 17 for this particular sale, there was a holdback of, you 18 know, 79 cents because it rounded up to the next dollar? 19 A. Yeah. We had it in one of the documents that 15:49 20 we reviewed a little while ago. It was in that column. 21 Q. Now, for the core models, who decided what 22 qualified as a core model? 23 A. Ultimately, the director decided which was the 24 model. He also would get input from the vendor and 15:50 25 then, of course, you'd get input from some of the</p>	<p style="text-align: right;">188</p> <p>1 as core models in order to benefit the interests of the 2 members? 3 A. Yeah. To sell more of the product. Yeah. 4 MR. LAU: How many more minutes do we have on 15:52 5 the tape? 6 THE VIDEOGRAPHER: Seven. 7 MR. LAU: Maybe now would be a good time to 8 take a break. 9 THE VIDEOGRAPHER: The time is 3:51. This 15:52 10 ends Media Unit 4. We're now off the record. 11 (Break taken from 3:51 p.m. to 4:00 p.m.) 12 THE VIDEOGRAPHER: The time is four o'clock. 13 This begins Media Unit 5. We're back on the 14 record. 16:01 15 MR. LAU: I'd like to mark a new exhibit, 16 Exhibit 2495. This is transactional data produced 17 by MARTA, CRT-MARTA-0043818. And what's provided 18 here are screenshots of the first page of every 19 sheet within this particular Excel spreadsheet. 16:01 20 (Exhibit 2495 was marked for Identification.) 21 BY MR. LAU: 22 Q. Mr. Thompson, please take a look at this 23 document. Once you have familiarized yourself with it, 24 let me know. 16:03 25 A. Just a quick clarification.</p>
<p style="text-align: right;">187</p> <p>1 committee members. 2 Q. Can you think of an instance where the 3 director designated something as a core model contrary 4 to the wishes of committee members? 15:50 5 A. All the time. 6 Q. Would that be specific committee members had 7 different interests in mind in terms of what they wanted 8 to promote? 9 A. I guess I should probably say, earlier we 15:50 10 looked and we saw a list of like eight or nine people on 11 the committee. If you asked eight or nine people which 12 models should be core models, you'd probably get eight 13 different answers. So the director had to process all 14 of this information and make a judgment on what he felt 15:50 15 was the best direction to go. And you're not going to 16 please everybody. You want to please as many people as 17 you can so you can sell as much product. That's just 18 one piece of it. 19 You also had the vendor that you had to 15:51 20 satisfy because if you -- if you created too much demand 21 on a model, the vendor might not be able to provide the 22 amount of supply to our members. So it was a balancing 23 act, but the director was in the middle and had to make 24 the final call. 15:51 25 Q. Is it fair to say that models were designated</p>	<p style="text-align: right;">189</p> <p>1 Q. Yes. 2 A. Is there a reason why this goes from one 3 variation to a different variation, and then -- so 4 you've got -- I just wondered. I didn't know whether 16:03 5 the pages were out of order or not. 6 Q. If you look at the bottom, there are tabs. 7 A. Oh, okay. 8 Q. So the first page is sheet 1998 to 2003, and 9 the second one is 1998 to 2003 returns. 16:03 10 A. Okay. 11 Q. And it's just the first screenshot of each 12 sheet. 13 A. All right. Okay. All right. 14 Q. Mr. Thompson, do you recognize this document? 16:04 15 A. Yes. 16 Q. And what is this document? 17 A. It's a series of screenshots that would -- an 18 example, of our sales data over a period of time from 19 1998 to 2007. 16:04 20 Q. Would MARTA generate these types of 21 transactional data in the normal course of its business? 22 A. Yes. 23 Q. Would MARTA rely upon these types of 24 transactional data in the normal course of its business? 16:04 25 A. Yes.</p>

<p style="text-align: right;">190</p> <p>1 Q. Do you have any reason to believe that this 2 document is not authentic? 3 A. No. 4 Q. Let's take a look first at each individual 16:04 5 screenshot. And, if you can, please tell me what you 6 believe each sheet represents. So when I look at the 7 first sheet, the tab at the bottom reads "1998 to 2003." 8 Do you see that? 9 A. Yes. 16:05 10 Q. What do you think is reflected on this sheet? 11 A. This looks like the purchase data that we had 12 from 1998 to 2003. The second sheet would be a summary 13 of the returns that we had in that same period, 1998 to 14 2003. The third page would be 2003 to 2007 sales data. 16:05 15 The fourth page, 2003 to 2007 sales returns. The next 16 page is 2003 to 2007 purchases. And the final page is a 17 tab that says 2003 to 2007 returns. And my page doesn't 18 have any writing on it. 19 Q. So let's take a look at the first period. We 16:06 20 have a sheet for purchase data and we have a sheet for 21 returns, but I don't see any sheet for sales data. 22 During this period of time, 1998 to 2003, did MARTA 23 maintain sales data information? 24 A. Yes. 16:06 25 Q. And, if so, where would that information be</p>	<p style="text-align: right;">192</p> <p>1 try to determine for any specific -- any specific entry 2 the price that MARTA paid the vendor for a specific 3 purchase, where would I look? 4 A. It's not on this sheet. 16:09 5 Q. Is that information that MARTA stored on its 6 servers? 7 A. Yes. 8 Q. So the information about the price that MARTA 9 paid to the vendor is not on this sheet, correct? 16:09 10 A. Correct. 11 Q. But the unit price, that represents the price 12 that the member paid MARTA; is that correct? 13 A. Yes. 14 Q. Okay. And does that include all adjustments, 16:10 15 in terms of all the adjustments we have been talking 16 about? 17 A. It would have flowed like we talked, just 18 like -- it would have been the roundup cost, would be on 19 here. 16:10 20 Q. During this time period, 1998 to 2003, were 21 these separate adjustments such as the roundup or 22 holdback, the various credits that we've discussed, 23 would that be recorded on a transaction-specific basis? 24 A. Yes. 16:10 25 Q. And that information likely exists today on</p>
<p style="text-align: right;">191</p> <p>1 stored? 2 A. It would have been on the server. 3 Q. Okay. And the two sheets that I'm looking at 4 that indicate 1998 to 2003, these two sheets do not 16:07 5 contain sales data; is that correct? 6 A. This provides the sales data that we have -- 7 this provides the sales data that we had to our members. 8 Q. I thought you said that it represented the 9 purchase data for 1998 to 2003. The very top sheet, 16:07 10 what does that represent? 11 A. It's got the invoice number, so that would be 12 the sales data to the members. If I said that wrong, 13 I'd like to correct it. 14 Q. Okay. That's fine. 16:07 15 So you believe that the 19 -- the first sheet, 16 the first page, represents sales data to members. Now, 17 some of these column headings are obvious. Over on the 18 right-hand side, I, Column I, "Unit Price," what does 19 that represent? 16:08 20 A. The cost per unit of that product. 21 Q. And what is the next column, Column J, 22 "Extended Price"? What does that represent? 23 A. That would be -- the extended price would be 24 the quantity price times the unit price. 16:08 25 Q. And if I were to look at this information and</p>	<p style="text-align: right;">193</p> <p>1 one of the servers; is that correct? 2 A. Yes. 3 Q. Let's turn to the next sheet, 1998 to 2003 4 returns. Mr. Thompson, looking at the column headings 16:11 5 on this sheet, does this appear to be all of the 6 information that MARTA recorded for returns during the 7 1998 to 2003 period? 8 A. It looks like the data that would have been 9 captured. I don't know whether there are more pages 16:11 10 behind this. 11 Q. But in terms of the column headings, did the 12 column headings appear to be complete in terms of -- 13 A. Yes. 14 Q. This is all the information that MARTA would 16:12 15 record for returns during this time period? 16 A. Yes. 17 Q. If you'll turn to the next page, please. This 18 is a sheet entitled "2003 to 2007 SALE," which you 19 indicated this reflects the sales data during the 2003 16:12 20 to 2007 time period, correct? 21 A. Yes. 22 Q. I want you to look at the column headings and 23 let me know if this accurately reflects all of the 24 column headings that MARTA would record in its 16:12 25 transactional sales database for this period of time.</p>

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1 A. Yes.
 2 Q. What about AP net? Would AP net be a column
 3 recorded?
 4 A. I think it -- I'm trying to make sure I'm
 16:13 5 reading this right. It is pretty small.
 6 I think that's the unit cost column.
 7 MR. SHAW: Can I just ask, is this printout --
 8 are you sure there's no more columns to the right?
 9 MR. LAU: Yes.
 16:13 10 BY MR. LAU:
 11 Q. What about holdback? Should holdback be
 12 something that's reflected here?
 13 A. I think the holdback is the -- is Column C.
 14 Q. I read that as member name. Are you looking
 16:14 15 at a different column?
 16 A. I'm sorry. I'm looking at it and I thought it
 17 said Deduction C, which is Column O, that last column on
 18 the far right-hand side.
 19 Q. What about dealer cost? Is that something
 16:14 20 that should be reflected in the sales data?
 21 A. I think we had a different report for that on
 22 the purchase data, so --
 23 Q. Do you remember, Mr. Thompson, we were talking
 24 about the company Thomson earlier, and you were looking
 16:15 25 at that spreadsheet. Do you recall that spreadsheet had

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1 one column for Deduction C, and it had a separate column
 2 for holdback? Do you remember that?
 3 A. I think that was Column B. Yeah.
 4 Q. Do you recall there was a separate column for
 16:15 5 holdback?
 6 A. Right.
 7 Q. Shouldn't we see a similar column here in the
 8 transactional data for holdback?
 9 A. And I -- I think that's Column B, but I don't
 16:15 10 know for sure.
 11 Q. Looking at the 2003 to 2007 sale sheet, do you
 12 see the description -- take the first line item under
 13 "Description" that says "Television Analog." Does that
 14 refer to a CRT television?
 16:16 15 A. I would believe so.
 16 Q. If you look down maybe a third of the way
 17 down, there's a reference to "Projection Analog." Do
 18 you see that?
 19 A. I see "Combo."
 16:16 20 Q. A little bit below "Combo." It says
 21 "Projection Analog."
 22 A. Okay. It's right below the "Television
 23 Combo."
 24 Q. Correct.
 16:17 25 A. Yes. Okay.

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1 Q. Does that reflect a product containing a CRT?
 2 A. I believe so.
 3 Q. What about the one right above it, the one
 4 that says "Television Combo DVD/VCR"? Does that refer
 16:17 5 to a television containing a CRT?
 6 A. I believe so.
 7 Q. Turn to the -- with all of these spreadsheets,
 8 Mr. Thompson, does this reflect -- does it only contain
 9 information that -- about purchases received by MARTA's
 16:18 10 members in the United States?
 11 A. Yes.
 12 Q. I think I asked this question to you earlier,
 13 but did MARTA have any affiliates, any companies in
 14 which it held an equity interest? Any sister companies?
 16:18 15 Any subsidiaries? Any parents?
 16 A. No.
 17 Q. Do you recall any companies like that?
 18 A. No.
 19 Q. Turn to the spreadsheet that says "2003 to
 16:19 20 2007 PURCHASE." Is there a column here that represents
 21 MARTA's net cost?
 22 A. No.
 23 Q. Is that something that MARTA would typically
 24 retain in the normal course of its business?
 16:20 25 A. Yes.

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1 Q. Turn to the next page, which is 2003 to 2007
 2 Purchase Returns. The screenshot is blank but the
 3 entire sheet is blank as well.
 4 During the 2003 to 2007 time period, did MARTA
 16:20 5 have purchase returns during that time period?
 6 A. Probably.
 7 Q. And information about those returns would be
 8 recorded in MARTA's books and records, correct?
 9 A. That's probably on the servers at some point.
 16:21 10 Q. Go back to the sheet that says 2003 and 2007
 11 sales data.
 12 Are the unit costs and amount fields, are
 13 those net of all the adjustments identified in unit
 14 deduct A amount, unit deduct B amount and unit deduct C
 16:21 15 amount?
 16 A. Say that question again, please.
 17 Q. Is the -- all right. Look at Column I, "Unit
 18 Cost."
 19 A. Yes.
 16:21 20 Q. Is that unit cost, is that net of the
 21 deductions identified in Columns M, N and O, unit cost
 22 A, unit cost B and unit cost C?
 23 A. No.
 24 Q. So in order to obtain the net cost, we would
 16:22 25 start with the unit cost and then deduct unit cost --

<p style="text-align: right;">198</p> <p>1 unit deduct A, unit deduct B and unit deduct C; is that 2 correct? 3 A. Yes. 4 Q. And if we take the unit cost and make those 16:22 5 deductions for deduct A, deduct C, deduct C, would that 6 represent the price actually paid by MARTA members to 7 MARTA? 8 A. Yes. 9 Q. Thank you. You can put that document aside. 16:23 10 We had a discussion earlier today, 11 Mr. Thompson, about MARTA's competitors. Can you tell 12 me again who MARTA considered to be its competitors 13 during the relevant time period? 14 A. MARTA's competitors would be -- would have 16:24 15 been the other sources of distribution for the products 16 that we sold in the central bill arrangement. 17 Q. Can you give me some examples of these other 18 sources of distribution? 19 A. I called out a couple of names earlier, other 16:24 20 distributors. Almo was one name I called out. I think 21 it serves as -- you can fill in the blank, whatever 22 other distributors that were utilized by the various 23 vendors. 24 Q. I think you mentioned DSI? 16:24 25 A. DSI, Climatic. I can't remember all those</p>	<p style="text-align: right;">200</p> <p>1 during the relevant time period? 2 A. It would have been -- if I say loosely 3 defined, yes. Was there a service or subscription that 4 they would have? I don't believe one existed at the 16:26 5 time. 6 Q. What efforts would MARTA undertake to collect 7 information about the competitors of MARTA's members? 8 A. We'd check with our members. We would check 9 with vendors. 16:27 10 Q. And what would you be checking with the 11 members? 12 A. What was selling and about at what retail 13 price. 14 Q. And what would you check with the vendors? 16:27 15 A. We would attempt to validate the information 16 that we might have received from our members. 17 Q. And would you do this type of checking on a 18 regular basis? 19 A. Well, it would be as needed, and it would be 16:27 20 market situational. 21 Q. Why would you need to validate information 22 provided by a member? 23 A. Because the member didn't always have accurate 24 facts that they were communicating to us. 16:28 25 Q. Is it because the member simply made a</p>
<p style="text-align: right;">199</p> <p>1 names back then because some of them have merged since, 2 but -- 3 Q. Did you consider during the relevant time 4 period AVB to be a competitor? 16:24 5 A. AVB? 6 Q. Yes. 7 A. AVB was not a competitor for the central bill 8 program. They were a competitor for the buying group. 9 Q. I see. So when you defined competitor, you 16:25 10 mean that to say an entity that provides the same sort 11 of services that MARTA's provided; is that correct? 12 A. That is correct. 13 Q. Do you have any understanding as to -- again, 14 this is just for CRT televisions -- who MARTA's members 16:25 15 considered to be their competitors? Do you have any 16 understanding of that? 17 A. It would have been other retailers in the 18 market for like product. 19 Q. Can you give me some examples? 16:25 20 A. At the time, Circuit City was a large national 21 competitor. Best Buy was a national competitor. And 22 then you'd have to really boil it down to the individual 23 markets that our members were operating in. 24 Q. Did MARTA undertake any efforts to gather 16:26 25 information about the competitors of MARTA's members</p>	<p style="text-align: right;">201</p> <p>1 good-faith mistake, or was the member trying to play it 2 fast and loose, so to speak? 3 A. The member wanted to get -- wanted MARTA to do 4 as much as they could to get the lowest possible price 16:28 5 on a product. And one of the tactics that could have 6 been used would be to indicate that a model is selling 7 at this price, and it might not have been quite exactly 8 that way. 9 Q. Do you remember instances in your mind when a 16:28 10 member gave you that type of inaccurate information? 11 A. No. 12 Q. But do you have a general sense of that 13 occurring? 14 A. Yes. 16:28 15 Q. On more than one occasion? 16 A. I'm sure that it did. 17 Q. Okay. And by checking with the vendors, can 18 you recall instances where, having checked with the 19 vendor, it became apparent that a member was, in fact, 16:29 20 giving inaccurate information about prices? 21 A. There generally was more to the story than 22 what was passed along to us. 23 Q. Were you surprised to find out that MARTA 24 members were giving inaccurate information? 16:29 25 A. No. They just didn't have all of the facts</p>

<p style="text-align: center;">202</p> <p>1 together. And, you know, that might have contributed to</p> <p>2 their perception of what the costs were.</p> <p>3 Q. So you said you believe that there's simply a</p> <p>4 good-faith misunderstanding on the part of MARTA's</p> <p>16:29 5 members?</p> <p>6 A. Yes. They would get information, and</p> <p>7 sometimes the sources they got it from might not have</p> <p>8 been reliable.</p> <p>9 Q. And so there was never a case when you thought</p> <p>16:30 10 that the MARTA member was intentionally trying to give</p> <p>11 bad information.</p> <p>12 MR. SHAW: Object to the form.</p> <p>13 THE WITNESS: Not in my experience.</p> <p>14 BY MR. LAU:</p> <p>16:30 15 Q. Do you ever recall a situation where MARTA</p> <p>16 directed its members to do price shopping at the</p> <p>17 competitors of the members? That occurred, didn't it?</p> <p>18 MR. SHAW: Hold on a second.</p> <p>19 Object to the form.</p> <p>16:30 20 BY MR. LAU:</p> <p>21 Q. You can answer.</p> <p>22 MR. SHAW: You can answer one question. Which</p> <p>23 question do you want him to answer?</p> <p>24 BY MR. LAU:</p> <p>16:30 25 Q. Did you ever recall instances where MARTA</p>	<p style="text-align: center;">204</p> <p>1 MARTA in the ordinary course of its business?</p> <p>2 A. Yes.</p> <p>3 Q. Were these e-mails relied upon MARTA during</p> <p>4 the ordinary course of its business?</p> <p>16:34 5 A. Yes.</p> <p>6 Q. Do you have any reason to believe that this</p> <p>7 document is not authentic?</p> <p>8 A. No.</p> <p>9 Q. Okay. Again, this is a series of e-mails from</p> <p>16:34 10 2005. And then there's an e-mail at the bottom of 1,</p> <p>11 going on the top of 2. And this e-mail is from MARTA</p> <p>12 Cooperative; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And it looks like it's being sent to a</p> <p>16:34 15 Listserv of some sort; is that correct?</p> <p>16 A. I assume there was an internal list of the</p> <p>17 Toshiba dealers that were members of MARTA.</p> <p>18 Q. So when read in context, this e-mail appears</p> <p>19 to be sent to MARTA members who were dealing in Toshiba</p> <p>16:35 20 products, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Turn to the second page, please. Look</p> <p>23 at the second full paragraph that begins as follows:</p> <p>24 "In order to ascertain the actual situation, MARTA</p> <p>16:35 25 requests all Toshiba dealers shop at least one Best Buy</p>
<p style="text-align: center;">203</p> <p>1 directed its members to examine the prices at the</p> <p>2 competitors of MARTA?</p> <p>3 A. They would ask to validate a claim that a</p> <p>4 member might make. They would ask, did you shop them?</p> <p>16:31 5 Do you have advertising evidence? What do you have to</p> <p>6 substantiate this?</p> <p>7 Q. Did MARTA ever provide incentives for its</p> <p>8 members to check prices at the competitors of MARTA's</p> <p>9 members?</p> <p>16:31 10 A. Not to my knowledge.</p> <p>11 Q. Let's look at another document.</p> <p>12 I'll mark as Exhibit 2496 a document Bates</p> <p>13 No. CRT-MARTA-0033521. And this is a two-page document.</p> <p>14 It's an e-mail dated November 3, 2005, from Bill Bursley</p> <p>16:32 15 to Warren Mann.</p> <p>16 (Exhibit 2496 was marked for Identification.)</p> <p>17 BY MR. LAU:</p> <p>18 Q. Please review this document and let me know</p> <p>19 once you've had a chance to do so.</p> <p>16:34 20 A. Okay.</p> <p>21 Q. Mr. Thompson, do you recognize this document?</p> <p>22 A. Yes.</p> <p>23 Q. And what is this document?</p> <p>24 A. A string of e-mails.</p> <p>16:34 25 Q. Were these e-mails generated by or sent to</p>	<p style="text-align: center;">205</p> <p>1 store over the next few days."</p> <p>2 Do you see that sentence?</p> <p>3 A. Yes.</p> <p>4 Q. Let's look at the next witness sentence:</p> <p>16:35 5 "Shoppers should ask about both models, indicate an</p> <p>6 interest for two pieces, and verify that they are in</p> <p>7 stock for immediate sale."</p> <p>8 Do you see that sentence?</p> <p>9 A. Yes.</p> <p>16:35 10 Q. Look at the next sentence: "More detailed</p> <p>11 information would be even more welcome."</p> <p>12 Do you see that sentence?</p> <p>13 A. Yes.</p> <p>14 Q. And then the next sentence reads: "Members</p> <p>16:36 15 who send reports in for their region by Thursday,</p> <p>16 November 4th, will receive a \$100 credit from MARTA for</p> <p>17 their efforts."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>16:36 20 Q. Mr. Thompson, this e-mail indicates that, in</p> <p>21 fact, MARTA did request its members to shop and price</p> <p>22 check at the members' competitors; here, Best Buy,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>16:36 25 Q. And, in fact, MARTA paid -- would pay its</p>

<p style="text-align: center;">206</p> <p>1 members to shop at its -- at the members' competitors, 2 such as Best Buy, in order to ascertain what Best Buy 3 was selling merchandise at, correct? 4 MR. SHAW: Object to the form. 16:36 5 THE WITNESS: They were asking about that was 6 in stock for immediate sale. 7 BY MR. LAU: 8 Q. And, Mr. Thompson, this is not an isolated 9 example, is it? 16:36 10 A. Based on the note at the bottom, 11 "Historically, getting response from some members has 12 proven difficult." So they haven't been able to get any 13 kind of response from the members when requesting a 14 survey in the past, so they tried to get some action. 16:37 15 Q. But on more than one occasion, they were 16 attempting to obtain information from of the members' 17 competitors, correct? 18 A. And they weren't able to get it. 19 Q. Having looked at this e-mail, Mr. Thompson, 16:37 20 does this refresh your recollection about MARTA's 21 efforts to obtain market information about members' 22 competitors? 23 A. No. 24 Q. Let's look at another document. I would like 16:38 25 to mark this next document as Exhibit 2497. It is a</p>	<p style="text-align: center;">208</p> <p>1 A. No. 2 Q. How would MARTA rely upon this document in the 3 normal course of its business? 4 A. My assumption is that either Bill Bursley or 16:41 5 Warren Mann shopped Best Buy, and this is what they 6 found on the floor and the prices. 7 Q. Is it fair to say that this is a practice of 8 MARTA to shop companies such as Best Buy to determine 9 prices on the floor? 16:41 10 MR. SHAW: Object to the form. 11 THE WITNESS: I would suspect this would be 12 more of an educational exercise for the director or 13 the general manager to remain knowledgeable on what 14 one of the larger competitors in the marketplace is 16:41 15 doing. 16 BY MR. LAU: 17 Q. They would gather this type of information 18 because it was important for MARTA to know what Best Buy 19 was selling its products at, correct? 16:42 20 MR. SHAW: Object to the form. 21 THE WITNESS: Yes. 22 BY MR. LAU: 23 Q. And Mr. Bursley or Mr. Mann, they would 24 utilize this information for purposes of determining how 16:42 25 to negotiate prices with vendors, correct?</p>
<p style="text-align: center;">207</p> <p>1 document Bates Nos. CRT-MARTA-0008537. It is a 2 four-page document entitled Video Board. Store: Best 3 Buy. Date: January 30, 2005. 4 (Exhibit 2497 was marked for Identification.) 16:38 5 BY MR. LAU: 6 Q. Please review this document and let me know 7 when you've had a chance to do so. 8 A. Okay. 9 Q. Mr. Thompson, do you recognize this document? 16:39 10 A. Yes. 11 Q. And what is this document? 12 A. It says "Store: Best Buy" and "Video Board" 13 on the top. 14 Q. Would MARTA generate these types of documents 16:40 15 in the normal course of its business? 16 A. No. 17 Q. Who would? Where do you think MARTA came to 18 obtain this information from? 19 A. You say in the normal course. And this looks 16:40 20 like a shopping project of some sort. 21 Q. Would MARTA rely upon these types of documents 22 in the normal course of its business? 23 A. Yes. 24 Q. Do you have any reason to believe that this 16:40 25 document is not authentic?</p>	<p style="text-align: center;">209</p> <p>1 A. To negotiate prices, to determine models, to 2 determine brands. 3 Q. Because it's important to understand what the 4 competition is doing, correct? 16:42 5 A. Yes. 6 Q. Let's look at another document. Put that 7 document aside. 8 I'm going to hand another document to the 9 Court Reporter. I would like this to be marked as 16:43 10 Exhibit 2498. It is a document with a Bates No. 11 CRT-MARTA-0026964. It is a July 19, 2002, e-mail from 12 MARTA Cooperative to MARTA at martacoop.com. 13 Please review this document. And when you've 14 done so, let me know. 16:43 15 (Exhibit 2498 was marked for Identification.) 16 THE WITNESS: Okay. 17 BY MR. LAU: 18 Q. Mr. Thompson, do you recognize this document? 19 A. Yes. 16:44 20 Q. And what is this document? 21 A. It is a MARTA bulletin. 22 Q. What is the subject matter of this bulletin? 23 A. Early look at Best Buy's back-to-school ad. 24 Q. Would MARTA generate these types of documents 16:44 25 in the normal course of its business?</p>

<p style="text-align: right;">210</p> <p>1 A. From time to time.</p> <p>2 Q. Would MARTA rely upon these types of documents</p> <p>3 in the normal course of its business?</p> <p>4 A. Yes.</p> <p>16:44 5 Q. Do you have any reason to believe that this</p> <p>6 document is not authentic?</p> <p>7 A. No.</p> <p>8 Q. Mr. Thompson, why is MARTA interested in an</p> <p>9 early look at Best Buy's back-to-school ad? Why would</p> <p>16:45 10 that be important to MARTA?</p> <p>11 A. Best Buy sold major appliances and consumer</p> <p>12 electronics, like most of our dealers did.</p> <p>13 Q. So, again, it's important for MARTA to</p> <p>14 understand what companies such as Best Buy are doing in</p> <p>16:45 15 terms of what they're selling and what they're selling</p> <p>16 at, correct?</p> <p>17 A. It's important for MARTA to understand that,</p> <p>18 but it's also equally important for MARTA to communicate</p> <p>19 that information to its members so the members also know</p> <p>16:45 20 what kind of competitive impact they're going to have in</p> <p>21 the marketplace.</p> <p>22 Q. Gathering this type of competitive information</p> <p>23 for its members, that was part of the service that MARTA</p> <p>24 provided its members, correct?</p> <p>16:45 25 A. Yes.</p>	<p style="text-align: right;">212</p> <p>1 A. Yes.</p> <p>2 Q. If I use the term "LCD," do you understand</p> <p>3 that term to mean a different type of display technology</p> <p>4 involving liquid crystal displays?</p> <p>16:47 5 A. Yes.</p> <p>6 Q. Did MARTA sell items that did not contain CRTs</p> <p>7 but which competed with CRT televisions?</p> <p>8 A. Yes.</p> <p>9 Q. And what were those products?</p> <p>16:47 10 A. Plasma and LCD and projection.</p> <p>11 Q. Does MARTA currently deal in plasma</p> <p>12 televisions?</p> <p>13 A. No.</p> <p>14 Q. Does MARTA currently deal in LCD televisions?</p> <p>16:48 15 A. No.</p> <p>16 Q. Does MARTA sell -- currently sell plasma --</p> <p>17 computer monitors?</p> <p>18 A. No.</p> <p>19 Q. Does MARTA currently sell LCD computer</p> <p>16:48 20 monitors?</p> <p>21 A. No.</p> <p>22 Q. At what point in time did LCD televisions,</p> <p>23 plasma televisions, begin to compete with the CRT</p> <p>24 televisions?</p> <p>16:48 25 A. They began in the marketplace early 2001 and</p>
<p style="text-align: right;">211</p> <p>1 Q. And this is not an isolated example of MARTA</p> <p>2 gathering information about the competitor to assist its</p> <p>3 members, correct?</p> <p>4 MR. SHAW: Object to the form.</p> <p>16:45 5 THE WITNESS: What's your definition of</p> <p>6 "isolated"? I mean, is this once a year? Twice a</p> <p>7 year? Once a month?</p> <p>8 BY MR. LAU:</p> <p>9 Q. What's your best understanding as to how often</p> <p>16:46 10 this occurred?</p> <p>11 A. From time to time -- this is a back-to-school</p> <p>12 ad. It could have been around some of the holiday</p> <p>13 periods we discussed earlier today.</p> <p>14 Q. When MARTA sent this to the e-mail</p> <p>16:46 15 marta@coop.com, who was MARTA sending this e-mail to?</p> <p>16 A. Well, I think it would have been the full list</p> <p>17 of members, would be my assumption.</p> <p>18 Q. Because the members would find this type of</p> <p>19 information important for their own business purposes,</p> <p>16:46 20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You can put that down.</p> <p>23 Mr. Thompson, if I use the term "plasma," do</p> <p>24 you understand that to mean a type of display</p> <p>16:47 25 technology?</p>	<p style="text-align: right;">213</p> <p>1 there beyond. Their prices were high. And as the</p> <p>2 prices came down, they began to compete with the CRT.</p> <p>3 Prior to that, it was very little competition because of</p> <p>4 the price.</p> <p>16:49 5 Q. When you were negotiating programs with</p> <p>6 vendors, programs involved CRT televisions, would you</p> <p>7 sometimes tell one vendor, hey, I just talked to this</p> <p>8 other vendor and their price for a 27-inch television is</p> <p>9 lower than yours; I think you should come down? Do you</p> <p>16:49 10 ever have those types of discussions?</p> <p>11 MR. SHAW: Object to the form.</p> <p>12 THE WITNESS: Generally, the discussions would</p> <p>13 not entail what information we had from other</p> <p>14 manufacturers.</p> <p>16:49 15 BY MR. LAU:</p> <p>16 Q. What would you use in terms of bargaining with</p> <p>17 vendors in order to get them to reduce their prices?</p> <p>18 A. Market -- market information that we were able</p> <p>19 to get about what is selling in the marketplace.</p> <p>16:50 20 Q. And where would this market information come</p> <p>21 from?</p> <p>22 A. It would have been from the director and the</p> <p>23 general manager, some of their competitive intelligence</p> <p>24 from feedback from our members.</p> <p>16:50 25 Q. Where would the director get his competitive</p>

<p style="text-align: right;">214</p> <p>1 intelligence from?</p> <p>2 A. He'd go into the store.</p> <p>3 Q. Which stores are we talking about? Retail</p> <p>4 stores?</p> <p>16:50 5 A. Yes.</p> <p>6 Q. Where would the members -- if you have any</p> <p>7 understanding, where would the members get their</p> <p>8 information from?</p> <p>9 A. They would go into the retail stores.</p> <p>16:51 10 MR. LAU: Why don't we take a short break now</p> <p>11 and then I can just wrap up this deposition</p> <p>12 shortly, okay?</p> <p>13 THE VIDEOGRAPHER: The time is 4:50. We're</p> <p>14 now off the record.</p> <p>16:57 15 (Break taken from 4:50 p.m. to 4:57 p.m.)</p> <p>16 THE VIDEOGRAPHER: The time is 4:57. We're</p> <p>17 back on the record.</p> <p>18 BY MR. LAU:</p> <p>19 Q. Mr. Thompson, during the relevant time period,</p> <p>16:58 20 was there any point in time when the price of CRT</p> <p>21 televisions increased? Do you recall?</p> <p>22 A. Did you say "increased"?</p> <p>23 Q. Yes.</p> <p>24 A. The relevant period of time is quite a long</p> <p>16:58 25 period of time.</p>	<p style="text-align: right;">216</p> <p>1 ones with the increased prices; is that correct?</p> <p>2 MR. SHAW: Object to the form.</p> <p>3 THE WITNESS: Generally speaking, yes.</p> <p>4 BY MR. LAU:</p> <p>16:59 5 Q. Did MARTA view the vendors who sold CRT</p> <p>6 televisions differently in terms of the quality of the</p> <p>7 televisions being sold, the features, the reliability?</p> <p>8 Would MARTA view all these TVs as the same?</p> <p>9 A. Well, a lot of it would depend on the history</p> <p>17:00 10 and the reliability of the product, as we looked back.</p> <p>11 And then, oddly enough, the vendor, how they handled</p> <p>12 problems, was almost as big a deal as how many problems</p> <p>13 they had. If they took care of problems quickly and</p> <p>14 made problems go away, the members would not really look</p> <p>17:00 15 at them as being chronic or big problem brands.</p> <p>16 Q. Did MARTA view all of the vendors who produced</p> <p>17 CRT televisions equally in terms of the quality of the</p> <p>18 television being produced?</p> <p>19 A. I don't think so. I mean --</p> <p>17:01 20 Q. Who had a good reputation for good quality?</p> <p>21 A. Well, within the MARTA ranks, both Toshiba and</p> <p>22 Sharp had high marks, high levels of support within the</p> <p>23 group. And, as a result, they felt that those brands</p> <p>24 were very good. Sony was not necessarily -- was not a</p> <p>17:01 25 central bill brand, but Sony had a very good reputation</p>
<p style="text-align: right;">215</p> <p>1 Q. 1995 to 2007.</p> <p>2 A. So I don't know specifically if it did -- if</p> <p>3 they did, but I'm sure there were some models that did.</p> <p>4 But, overall, generally speaking, the market was very</p> <p>16:58 5 much in a slow growth.</p> <p>6 Q. For those instances when certain models, the</p> <p>7 price increased, did it have the effect on other models</p> <p>8 as well, kind of like a wave. Well, this one, the</p> <p>9 27-inch, is going up so now everything is going up, or</p> <p>16:58 10 was it more isolated in nature?</p> <p>11 MR. SHAW: Object to the form.</p> <p>12 THE WITNESS: I think what would happen is,</p> <p>13 more likely, it would happen, as a line change was</p> <p>14 going in play, that there would be -- they would</p> <p>16:59 15 seek to plug in some price increases with the new</p> <p>16 models and series.</p> <p>17 BY MR. LAU:</p> <p>18 Q. But that would be just for specific models; is</p> <p>19 that correct?</p> <p>16:59 20 A. Well, they'd change the line, and the old</p> <p>21 models would cease to exist and they'd bring out new</p> <p>22 models with different feature packages and strive to</p> <p>23 move up the price point ladder a little bit.</p> <p>24 Q. So it would be the new models that were coming</p> <p>16:59 25 off the line with the new features. Those would be the</p>	<p style="text-align: right;">217</p> <p>1 at the time.</p> <p>2 Q. Putting aside support issues. I'm just</p> <p>3 talking about the quality of the television itself.</p> <p>4 Did -- just looking at the quality of the television</p> <p>17:01 5 itself, did MARTA view some vendors as having a higher</p> <p>6 quality television as opposed to other manufacturers?</p> <p>7 A. Again, I come back to what sold. The products</p> <p>8 that were selling the best, the members -- whether they</p> <p>9 were the best quality or not, that was their perception,</p> <p>17:02 10 that they had top quality, because that's what they were</p> <p>11 selling and that was their experience.</p> <p>12 Q. So who had -- of all the vendors who sold CRT</p> <p>13 televisions, who had better quality televisions?</p> <p>14 A. I don't think we ever kept track of that data.</p> <p>17:02 15 Q. From your own perception as executive</p> <p>16 director, as someone whose job is it to get the best</p> <p>17 deal for the members, you had an opinion, didn't you,</p> <p>18 about which brands had a better reputation for quality,</p> <p>19 or was it something that you didn't care about?</p> <p>17:03 20 A. Certainly, we cared about it, but the brands</p> <p>21 that we sold the most we felt comfortable saying that</p> <p>22 they were top-quality brands.</p> <p>23 Q. Which brands did you sell the most?</p> <p>24 A. Toshiba, Sharp. Those were the top brands</p> <p>17:03 25 that I -- that I remember, as we looked back through the</p>

<p style="text-align: right;">218</p> <p>1 data, consistently were good sellers.</p> <p>2 Q. Give me some examples of vendors that were not</p> <p>3 top sellers that were sort of low sellers.</p> <p>4 MR. DIEL: Objection. Form.</p> <p>17:03 5 THE WITNESS: Well, we didn't do as much</p> <p>6 volume with Hitachi. We didn't do as much volume</p> <p>7 with Panasonic. So those would be a couple of</p> <p>8 examples.</p> <p>9 BY MR. LAU:</p> <p>17:03 10 Q. Would the quality of televisions produced by</p> <p>11 those other companies, would that provide an explanation</p> <p>12 as to why they weren't selling as well as the high</p> <p>13 sellers such as Sharp and Toshiba?</p> <p>14 MR. DIEL: Objection to form.</p> <p>17:04 15 MR. SHAW: Objection to form.</p> <p>16 MR. DIEL: Calls for speculation.</p> <p>17 THE WITNESS: I really don't know.</p> <p>18 BY MR. LAU:</p> <p>19 Q. Putting quality aside, did all the televisions</p> <p>17:04 20 that were part of the vendor programs, did they all have</p> <p>21 the same features?</p> <p>22 A. Not the same but you could say similar.</p> <p>23 Q. Would some of the televisions differ in terms</p> <p>24 of the quality of the screen?</p> <p>17:04 25 A. Quality of the screen?</p>	<p style="text-align: right;">220</p> <p>1 Q. During the relevant time period -- and, again,</p> <p>2 this is the relevant period from 1995 to 2007 -- did you</p> <p>3 hear any discussion within MARTA about CRT manufacturers</p> <p>4 being part of a cartel or being part of a conspiracy?</p> <p>17:06 5 A. No.</p> <p>6 Q. Did you -- during the relevant time period,</p> <p>7 did you hear any rumors in the industry about CRT</p> <p>8 manufacturers being involved in a cartel or in a</p> <p>9 conspiracy?</p> <p>17:07 10 A. No.</p> <p>11 Q. When was the first time you heard that there</p> <p>12 might be such a cartel or conspiracy? When did that</p> <p>13 occur?</p> <p>14 A. I think it was in 2011.</p> <p>17:07 15 Q. What information did you come across that led</p> <p>16 you to this conclusion?</p> <p>17 A. I received a contact from Matt Jermyn at Class</p> <p>18 Action Refund, and he walked through, I guess, a</p> <p>19 big-picture scenario of the case that had been filed and</p> <p>17:08 20 the possibilities for MARTA.</p> <p>21 Q. And what is Class Action Refund?</p> <p>22 A. They're a legal firm that puts together class</p> <p>23 action litigation.</p> <p>24 Q. Okay. And in response to this contact from --</p> <p>17:08 25 how do you pronounce his last name? Jermyn?</p>
<p style="text-align: right;">219</p> <p>1 Q. Of the screen, in terms of the resolution.</p> <p>2 A. The quality of the picture?</p> <p>3 Q. The picture. Yes. That's right. In terms of</p> <p>4 the resolution, in terms of the crispness of the image?</p> <p>17:05 5 Did the features differ or were they the same?</p> <p>6 A. The sets could be adjusted for the picture,</p> <p>7 and that's one thing that can happen. But, again, my</p> <p>8 perception of a great picture might be different than</p> <p>9 your perception of a great picture. Some people want</p> <p>17:05 10 more brightness. Some people want less brightness. So</p> <p>11 you get in a lot -- it's quite a variance in the</p> <p>12 situations and the perception of, you know, of how good</p> <p>13 a quality of a picture that you're trying to pull out</p> <p>14 here.</p> <p>17:05 15 Q. In terms of the -- your perceived demand in</p> <p>16 the United States for TVs while you were executive</p> <p>17 director, did U.S. consumers, you think they were</p> <p>18 looking for more larger-size screens or smaller-size</p> <p>19 screens?</p> <p>17:06 20 MR. SHAW: Object to the form.</p> <p>21 THE WITNESS: The movement went to larger-size</p> <p>22 screens. And as it went to larger type -- size</p> <p>23 screens, the pricing on the larger screens came</p> <p>24 down.</p> <p>17:06 25 BY MR. LAU:</p>	<p style="text-align: right;">221</p> <p>1 A. Jermyn, J-E-Y-R-M [sic].</p> <p>2 Q. In response to this contact, did you have any</p> <p>3 more contacts with Mr. Jermyn?</p> <p>4 A. Yes.</p> <p>17:08 5 Q. And have you retained Class Action Refund for</p> <p>6 purposes of this litigation?</p> <p>7 A. Yes.</p> <p>8 Q. In what capacity?</p> <p>9 A. They're an advisor.</p> <p>17:08 10 Q. And you said that this Class Action Refund, is</p> <p>11 it a law firm or just an advisory firm, if you know the</p> <p>12 difference?</p> <p>13 A. I don't know the difference. I wish I could</p> <p>14 speak more eloquently on that, but --</p> <p>17:09 15 Q. That's fine. That's fine.</p> <p>16 What's the nature of the relationship between</p> <p>17 MARTA and Class Action Refund? What did they agree to</p> <p>18 do for MARTA?</p> <p>19 A. They helped us outline the program to our</p> <p>17:09 20 board of directors. And from that, they then introduced</p> <p>21 us to Boies Schiller, who then has been doing the work</p> <p>22 for us.</p> <p>23 Q. Is Class Action Refund being compensated for</p> <p>24 the work that it is doing for MARTA?</p> <p>17:09 25 A. Yes.</p>

<p style="text-align: right;">222</p> <p>1 Q. What's the nature of that compensation?</p> <p>2 A. A percentage of the settlement.</p> <p>3 Q. And what percentage would that be?</p> <p>4 A. Twenty-five percent.</p> <p>17:10 5 Q. Who within MARTA made the decision to file</p> <p>6 this lawsuit?</p> <p>7 A. The board of directors.</p> <p>8 Q. Who decided which CRT manufacturers to name as</p> <p>9 defendants in this lawsuit?</p> <p>17:10 10 A. It was --</p> <p>11 MR. SHAW: I'll just caution you not to give</p> <p>12 out legal advice. If you're able to give the</p> <p>13 answer without disclosing communication you had</p> <p>14 with lawyers.</p> <p>17:11 15 THE WITNESS: Our legal advisors provided us</p> <p>16 guidance.</p> <p>17 BY MR. LAU:</p> <p>18 Q. Outside of the guidance provided to you by</p> <p>19 lawyers, was there any other reason why you picked the</p> <p>17:11 20 specific defendants to sue?</p> <p>21 A. No.</p> <p>22 Q. Is there any relationship between MARTA and</p> <p>23 the companies PC Richard and ABC Warehouse?</p> <p>24 A. No.</p> <p>17:11 25 Q. Is PC Richard a member of MARTA?</p>	<p style="text-align: right;">224</p> <p>1 MR. SHAW: Yeah. Let's take a break for a</p> <p>2 couple moments.</p> <p>3 THE VIDEOGRAPHER: The time is 5:12. We're</p> <p>4 now off the record.</p> <p>17:16 5 (Break taken from 5:12 p.m. to 5:16 p.m.)</p> <p>6 THE VIDEOGRAPHER: The time is 5:16. We're</p> <p>7 back on record.</p> <p>8 MR. SHAW: I don't have any questions to</p> <p>9 follow up on.</p> <p>17:16 10 MR. LAU: Mr. Thompson, based on your</p> <p>11 testimony today, it occurs to me that there are</p> <p>12 some documents that might be missing from the</p> <p>13 documents produced by your lawyers, and there might</p> <p>14 be some aspects of the transactional data that are</p> <p>17:17 15 missing. So I'm going to take the information I've</p> <p>16 learned today and work with your lawyers to get a</p> <p>17 full and complete document production.</p> <p>18 I'd like to thank you for your time today. I</p> <p>19 appreciate your cooperation. So I'm finished with</p> <p>17:17 20 questions for today. Thank you.</p> <p>21 MR. SHAW: I'll just put on the record that's</p> <p>22 fine. If you have something that you'd like to</p> <p>23 send us in a letter, go ahead. I think we have</p> <p>24 complete production and we'll work with you to make</p> <p>17:17 25 sure you understand the data like we did in the</p>
<p style="text-align: right;">223</p> <p>1 A. No.</p> <p>2 Q. Is ABC Warehouse a member of MARTA?</p> <p>3 A. No.</p> <p>4 Q. Has MARTA assigned any of the claims it is</p> <p>17:11 5 asserting in this case? Has MARTA assigned any of the</p> <p>6 claims that it is asserting in this case?</p> <p>7 A. No.</p> <p>8 Q. Have any MARTA members assigned claims to</p> <p>9 MARTA?</p> <p>17:12 10 A. No.</p> <p>11 Q. Has any entity assigned any claims to MARTA in</p> <p>12 this litigation?</p> <p>13 A. No.</p> <p>14 MR. LAU: That's all the questions I have. Do</p> <p>17:12 15 you want to take a break and decide whether you</p> <p>16 want to do any cross-exam questions?</p> <p>17 MR. SHAW: Why don't we see if there's any</p> <p>18 other questions coming up first?</p> <p>19 MR. LAU: Do we have any questions from anyone</p> <p>17:12 20 participating on the phone today?</p> <p>21 MR. DIEHL: No. This is Ike Diehl for the</p> <p>22 indirect purchasers. No questions.</p> <p>23 MR. LAU: Anyone else?</p> <p>24 I take that as a no.</p> <p>17:12 25 How would you like to proceed, Mr. Shaw?</p>	<p style="text-align: right;">225</p> <p>1 data letter that you responded.</p> <p>2 MR. LAU: I appreciate that, Mr. Shaw. Thank</p> <p>3 you.</p> <p>4 THE VIDEOGRAPHER: The time is 5:16. This</p> <p>17:17 5 ends the deposition. We're now off the record.</p> <p>6 (The deposition was concluded at 5:16 p.m.)</p> <p>7 ---o0o---</p> <p>8</p> <p>9</p> <p>10 I have read the foregoing deposition</p> <p>11 transcript and by signing hereafter, approve same.</p> <p>12</p> <p>13 Dated_____.</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 (Signature of Deponent)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE OF REPORTER

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3 STATE OF FLORIDA
COUNTY OF ORANGE

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5 I, NINETTE BUTLER, RPR, CRR, FPR, do hereby certify
6 that I was authorized to and did stenographically report
7 the foregoing video-recorded deposition of ROBERT
8 THOMPSON; that a review of the transcript was requested;
9 and that the foregoing transcript, Pages 4 through 225,
10 is a true record of my stenographic notes.11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney or counsel of any of the parties'
13 attorneys or counsel connected with the action, nor am I
14 financially interested in the action.15 DATED this 26th day of February, 2014, in Orlando,
16 Orange County, Florida.

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NINETTE BUTLER, RPR, CRR, FPR

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1 CERTIFICATE OF OATH

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3 STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

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5 I, NINETTE BUTLER, RPR, CRR, FPR and Notary Public,
6 State of Florida, certify that the witness, ROBERT
7 THOMPSON, personally appeared before me on the 14th day
8 of February, 2014, and was duly sworn.

9

10 WITNESS my hand and official seal this 26th day of
11 February, 2014.

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NINETTE BUTLER, RPR, CRR, FPR

17

AND NOTARY PUBLIC

Commission No.: EE033998

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My Commission Expires: 10/11/2014

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